

**PATENT AND TRADEMARK OFFICE BUILDING  
CONSOLIDATION**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE

OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE GENERAL SERVICES ADMINISTRATION PROPOSED  
ACQUISITION OF FACILITIES TO HOUSE THE PATENT AND TRADE-  
MARK OFFICE, U.S. DEPARTMENT OF COMMERCE

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SEPTEMBER 23, 1998

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## **PATENT AND TRADEMARK OFFICE BUILDING CONSOLIDATION**

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**WEDNESDAY, SEPTEMBER 23, 1998**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 4 p.m. in room 406, Senate Dirksen Building, Hon. John Warner (chairman of the subcommittee) presiding.

Present: Senators Warner, Smith, Sessions, and Chafee [ex officio].

### **OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE [assuming the chair]. I want to welcome everyone here this afternoon. This is a hearing of the Senate Environment and Public Works Subcommittee on Transportation and Infrastructure. The hearing is on the Patent and Trademark Office Consolidation.

Unfortunately, Senator Warner, who was going to preside over this, is late. He asked me if I would take over, and I'm glad to do so. He should be here shortly. He asked that I get the hearing started.

I want to express my appreciation to Senator Warner for holding this hearing. It's an important matter. The Patent and Trademark Office is the Government agency that's charged with the advancement and protection of intellectual property. It's at the PTO that inventors apply for patents and register their trademarks.

As time and technology have progressed, the number of patents and trademarks have not only increased, but they've become more complicated, as so many know.

To maintain and promote intellectual property protection, PTO's staff needs to operate effectively and efficiently. Toward that end, GSA and PTO began discussions in the late 1980's—mind you, that's 10 years ago—to determine how best to house this agency and its employees. The goal was and still is to provide space in a manner that maximizes efficiency for both the staff and user community, to the ultimate benefit of the taxpayer.

In 1995 this committee and the House Committee on Transportation and Infrastructure authorized GSA to proceed with procurement of a long-term operating lease. That procurement is well underway. Indeed, it is drawing to a close.

Throughout this lengthy process, concerns have arisen regularly about the scope and projected cost of the consolidation, despite numerous comprehensive studies. A number of reports have been aired, but these have sent mixed signals, which is disturbing.

The point of today's hearing is to air the various concerns and charges made about this project and determine their legitimacy. We owe it to the PTO and its staff, the user community, and the taxpayers to ensure that this project is worthwhile and merits our continued support.

I'm confident that testimony we hear today will help answer the questions. The script here says "for once and all." I'm not that totally confident it will be for once and all. We'll struggle to do our best on that point.

We're pleased to have Senator McCain, who I believe is going to be here shortly. He's a noted guardian of the taxpayer interest, and obviously we look forward to hearing from him.

Now, while we're waiting for Senator McCain, if Mr. Peck, who is commissioner of Public Buildings Service, will come forward, why don't we get started with you. And Mr. Lehman, commissioner of the Patent and Trademark Office—if Mr. Lehman would come forward, too. Why don't you each take seats. I will interrupt you when Senator McCain comes so that we can move on with his testimony.

All right. Let's go to it, Mr. Peck.

**STATEMENT OF HON. ROBERT A. PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION, WASHINGTON, D.C.**

Mr. PECK. Thank you, Mr. Chairman.

I have a statement which I would like to submit for the record, and I will now summarize it.

We appreciate the opportunity to be here, too. I'm appearing, obviously, on behalf of the General Services Administration to report on the Patent and Trademark Office consolidation proposed for Northern Virginia.

We believe that by competitively procuring a 20-year operating lease we will provide up-to-date, efficient, and cost-effective office space to support PTO's requirements. The project makes good business sense and is in the best interest of the Government.

I'm going to let Mr. Lehman talk to you more extensively about the efficiencies that can be gained by consolidating. I'll just note, as he will, too, that PTO has offices in 18 different buildings. Many of those buildings at the moment do not meet our fire, life, safety, and handicapped accessibility guidelines and would need renovation to meet those guidelines.

Senator CHAFEE. That's all leased space, right?

Mr. PECK. Yes, sir. They've been leased for quite some time.

And, of course, one of the possible outcomes of this is that we would continue to lease where we are now in upgraded facilities, because they are, in fact, obviously, one of the competitive sites.

I will also tell you that, given other priorities, the Administration some time ago—in fact, in 1995—proposed a lease for this project because it looked like there would be no funds available in the fore-

seeable future to build a facility for PTO, a Government-owned facility. There are also some flexibilities that having a lease gives us.

But, because we also agreed that we would keep this to what is called an "operating lease" as opposed to a capital lease, which means it meets the scoring rules requirement under the Budget Enforcement Act for an operating lease, we are requiring in the competition that the lease rate is a market rate, and a relatively low one, particularly considering what we are about to acquire is essentially a Government headquarters building.

The Congressionally approved rent limit which we are adhering to is roughly equivalent to rates that PTO is currently paying and is equivalent to current market rates in Northern Virginia. In fact, including escalations that are allowed by the time we award this, there's good reason to believe that the rental rate we are acquiring will be below the market when we finally do sign the lease.

If the project is delayed, extending existing leases with fundamental building improvements to match market comparables—in other words, to make it a modern, class A office building—would cost us an additional \$6.4 million annually, or \$32 million over the typical 5-year lease extension. I just mention that because extending the leases has been suggested as an option.

The technical specifications for the project are not lavish. I will go into that in just a few minutes.

And, finally, ongoing Congressional oversight, an audit by the Inspector General of the Commerce Department, and a review by a contractor commissioned by the Secretary of Commerce all support the conclusion that we should continue with this space consolidation project.

I should just note that this goes back to 1989, this project, when GSA and PTO began working on plans to consolidate and update the PTO offices. The project was authorized by this committee on October 24, 1995, and on November 16, 1995, by the House of Representatives. We're going on 3 years since authorization.

This location has housed the PTO facility for 20 years. It is a set of leased buildings in the Crystal City area. We have 33 separate lease agreements at the moment in these 18 different buildings.

Clearly, one of the goals of this project is to consolidate PTO, because we find in most agencies, while not everyone needs to be within hailing distance of each other, everyone does need to be within reasonable proximity for meetings, and it is a fundamental of modern corporate management that being able to reach out, even in this age of technology, that being able to reach out to the people you work with can create a lot of intellectual management synergy.

There have been questions about the competition under which we have proceeded here, and I will just tell you that there are a couple of interesting issues here.

Typically, as I think you know and we have testified before, Federal construction usually has a lower present value cost than leasing does at market rates; however, at the rental rate proposed in the approved prospectus, the present value cost of leasing compares relatively more favorably than does direct Federal construction. It is not cheaper. I have to say it is not less on a present value basis, but relatively closer to Federal construction than is normally the case.

As authorized, the project will provide approximately 2.4 million rentable square feet of office space at a maximum annual cost of \$57.2 million in fiscal year 1996 dollars. This amount can be escalated for inflation until the space is actually accepted.

Finally, I will note that we have issued the solicitation for offers for this space, which was issued on June 26, 1996, under provision of the Federal Acquisition Reform Act, which allows us to proceed in a two-phase process. We identified 17 potential sites that could meet the pre-approved zoning and master planning requirements for this project.

Senator CHAFEE. When you're looking for these sites, does that mean 17 potential sites that would accommodate all of PTO? In other words, you take the PTO offices in 18 buildings now and put it into one?

Mr. PECK. Yes, sir. They had to be sites that were large enough—that had planning approvals or at least would meet the Arlington County or Alexandria planning guidelines. We knew also that it had to be in northern Virginia, and we identified 17 sites that we thought could meet the space and zoning and planning requirement.

We also required that there be reasonable proximity to public transportation, because this is a large project and we wanted to have the minimal impact on the road network in the area, as we usually do in our solicitations in this area, and so we required some proximity to Metro Rail.

The project specifications on construction are comparable to those used for other recent Federal agency consolidations, including the new IRS buildings in New Carrollton, Maryland, the Health Care Financing Administration in Baltimore, which I would note again is a leased project, and the NASA headquarters in Washington.

The construction standards included in our solicitation for offers do not require or specify lavish finishes or amenities. They are intended to provide space and services in the most cost-effective manner over the term of occupancy.

For example, where the SFO requires the employment of high-quality materials, which are durable and easily maintained, this is just good building practice in a heavily trafficked public area. There is an issue here of life cycle costing. You can buy cheap materials up front and pay to repair and replace them perennially over the years, or you can buy good ones up front—good, but not lavish.

The per-square-foot interior build-out cost is comparable to other Government projects, with a base building in what is called in the real estate industry a “cold, dark shell configuration,” and this becomes important because some of the numbers I've seen have compared interior build-out costs to buildings that are called a “warm, lit shell.” This is all sort of silly sounding——

Senator CHAFEE. I must say a cold, dark shell sounds so forbidding.

[Laughter.]

Mr. PECK. And it is. It implies that you're basically buying a shell, a building shell, protection from the elements but hardly any of the other things that go into building a building beyond that—in other words, the heating, ventilating, and air conditioning sys-



tems and the lighting systems. In most commercial leases that we do where we're buying space in a building that someone already owns, we're buying, obviously, something in a warm, lit shell. It's a space you basically need to move your furniture into and plug in the equipment.

Here, again, we started out with a base building cost, which means just basically the perimeters, the elevators, those sorts of base building costs.

We got six phase one offers. After evaluating them, four were left. Again, that's the way the phase two process works. You see which ones meet your basic criteria. We had four offerers invited to submit phase two, and three sites remain under consideration. The fourth site was withdrawn by the offerors from competition earlier this year.

So we expect to request what are known as "best and final offers" by the end of this month, and in the phase-two evaluation those final offers, we say to people, "All right. We've talked back and forth for some time. Give us your best and final cost and make sure that you're meeting the quality that we need."

Finally, I just note again this has been extensively reviewed. Not only has this proposal been approved by the public works bodies in both houses of Congress, it has been subject to an audit by the Inspector General of Commerce and reviewed by a contractor this year commissioned by the Secretary of Commerce.

We, ourselves, this year, in response to a question about extending the existing leases, prepared a new market analysis of that option. The analysis, which was completed on July 31st of this year, indicated that extending existing leases with fundamental building improvements to match market comparables would cost an additional \$6.4 million annually. In other words, in most of the renewal options that we have in our leases right now, they don't require that the buildings be upgraded if we exercise the option.

What we are saying is if they were to be upgraded to meet market standards for buildings of that type, it would cost an additional \$6.4 million annually.

Senator CHAFEE. Over what you're now paying?

Mr. PECK. Yes, sir. It would be an additional \$32 million over the average 5-year extension term.

Just one final point, Mr. Chairman. We are here, in part, as you said, to clear up some of the questions about numbers. There are legitimate questions about a project of this size. It is perfectly reasonable for people to ask about the basis on which we make our estimates.

One perspective I would just say to you, as the Commissioner of the Public Buildings Service and someone who has done private sector real estate as well as public sector—one of the great things about my job is we are one of the largest real estate organizations in the United States. We have tremendous market power that we can bring to bear when we negotiate leases and get terrific bargains for the American people. We operate our buildings at a cost per square foot below what the private sector costs in comparable buildings.

In lease negotiations, we have numbers that show that we negotiate leases, generally at about the market rate. And I'm concerned.

I have to tell you I'm concerned about that latter number. We should be getting a better rate. One reason we don't often is that when you are in the private sector making an offer to the Government, one of the things you have to take into account is the amount of time it can take the Government to conclude the lease and the number of reviews that you have to go through. The longer these processes take, the more money you have to spend on lawyers and responding to questions and on keeping your team and your financing going, and we all pay for that.

As you said, I worked on this committee staff for many years. I've been here too long to hope that we can put it to rest this afternoon. It really is important for the Government in these types of matters to analyze the issues carefully and then make decisions that stick.

Thank you.

Senator CHAFEE. I think that's a fair request, Mr. Peck.

Mr. Lehman?

**STATEMENT OF HON. BRUCE A. LEHMAN, COMMISSIONER, U.S. PATENT AND TRADEMARK OFFICE, ARLINGTON, VIRGINIA**

Mr. LEHMAN. Thank you very much, Senator.

First, I'd like to say that I'm not a real estate expert. I wasn't appointed to my position by the President, nor confirmed by the Senate to be a real estate expert. The statute under which I was appointed requires that I know something about intellectual property. That's my responsibility, and I supervise an organization that now has 5,200 employees and will, over the course of the next several years, be going up to over 7,000 employees, and they are engaged in the process of securing the intellectual property rights of probably the most important part of the U.S. economy—the people that create the new technologies that are driving the United States increasingly into a leadership position in the world.

We have currently over 2,000 scientists and engineers who are our patent examiners. We will, after a period of time, after the next couple of years, have over 4,000.

Why is that, that we're increasing the size of our work force? Well, it's because business is booming, and that's a good thing for the American economy.

In the last 2 years, alone, we've had double digit increases in the number of patent filings—double-digit increases. We're the largest patent and trademark office in the world, and U.S. technology is pulling ahead of everyone else.

Our customers are the people who create these technologies. Getting a patent is absolutely critical to being able to get the financing that you need to put a new product on the market and move the whole economy forward. And when you get a new product, of course, you need to assign a name to that product. Sometimes you have a new company and you're a new venture, you need to get a new name for the company, and so you have to apply for a trademark, and we see that the trademark business is booming, just like the patent business is booming, too.

Employees who perform these functions need to have a place to work.

Now, we moved into our present facilities beginning in 1969. For many years we were in the Commerce Department building downtown, but we outgrew that facility, and we moved at that time into leased space across the river near National Airport in Crystal City. We've been paying rent ever since that period of time. That was not a decision I believe that the PTO made. That was made by others—the GSA, the Office of Management and Budget, our oversight committees on Capitol Hill.

Leases, of course, expire. When I became the Commissioner of Patents and Trademarks at the very beginning of this administration in 1993, one of the first things that I was informed of was that our leases—the original leases that we had—would shortly begin expiring. And so my predecessors—and going back, as was mentioned, earlier into the previous Administration—had been planning what we were going to do about that.

Now, there are really only two choices that we have. We could either just re-up, keep the existing leases that we have—and get new space, or we could do what I think is the American way of doing things. We could say to any American who wants to supply us with space, consistent with the conditions imposed upon us by this body, by the Congress, “You can come and bid and see if you can make us a better offer.”

That's exactly what we did. We put out, as Mr. Peck has just described to you, a competitive RFP. And, in fact, I don't believe, Senator, that I even had a choice about that, because I think, under the Federal Competition in Contracting Act, if I were to engage in a sole source procurement, I would have had to have come back to this committee and to the Congress and get permission to do that.

And so we are now at the point, after having engaged in quite a lengthy process of putting out a request for proposal, where we have three final bidders who are bidding on providing new space.

The important thing to understand about this procurement is that a requirement in the RFP is that the space actually be cheaper than what our existing leases would be. And, in fact, the prospectus that we have put out in 1998 dollars requires that we pay no more than \$25.41—1998 dollars—for the next 20 years.

Now, currently, in our existing space, without even extending our leases and having to deal on a sole source procurement—if we've only got one person selling the space, you obviously aren't going to get as good a deal—right now we are paying \$26.

So whatever information has been put out in public about this matter as to what's going to be cheaper or more expensive for the people who pay the cost of running the U.S. Patent and Trademark Office, the fact of the matter is that we are committed to paying less money, not more, and we are confident that the American way, that competitive procurement, not a sole source lease, is going to result in a better deal. We already have good reason to believe that that's the case.

I'd like to make one final point about who does pay these costs.

There has been a lot of discussion about the taxpayers paying this cost. We are a very unusual Federal agency—and let me say it doesn't make any difference whether we're taxpayers or not taxpayers; we should have space which is very cost-efficient. There is no question about that.

But in our particular case, taxpayers do not pay for the funding of the USPTO. We are funded entirely by fees paid by applicants for patents and trademarks. And I believe later on that Senator Warner has scheduled at least one representative of that fee payer group, the executive director of the American Intellectual Property Law Association, which is the largest single representative of our customers, and they can tell you what they think about this. I haven't seen their testimony, but I have a feeling that they're going to say that we have been responsive to their desire to try to put out a competitive procurement in which we will get the lowest possible price and still be able to do our work.

Now, as Mr. Peck has said—again, I'm not an expert on real estate. He is. It's largely the GSA which has developed the specifications for this particular building, and those specifications are going to be pretty much the same as other Federal agencies.

But we do have special requirements. Keep in mind that we are involved in a high-technology business. We have over 400 Ph.D.s and scientists among our 2,000 patent examiners. We have probably the largest data base of technical information in our mainframe computers—now it is going to go up on the internet—in the world, the USPTO. We are a highly automated agency. We probably have one of the most successful automation projects of any Federal Government agency.

And, of course, when you have everybody hooked up to a computer and the internet you need fiber optic cable and you need special conditions for that. That all means that we have to have a little bit different kind of office space than even you would have to have in a Congressional office.

When you want to examine a complicated recombinant DNA patent, you can't even examine it until you've put the recombinant DNA sequences through a data base in a mainframe computer that may make thousands and thousands of computations.

These create special issues for us that, naturally, have to be reflected in our space procurement and issues that were not around in 1969 when we leased our existing space, when we, in those days, were literally examining patents by going to what we call "the shoes"—a series of files in dark, old hallways, and patent examiners were literally corresponding with their customers through handwritten office actions. We've come a long way from that, and our new space should recognize those differences.

The bottom line is that, even with those differences and those upgrades, our request for proposals requires that the space be cheaper than what we would be paying now.

Senator CHAFEE. Mr. Lehman, are you satisfied with what the proposals are that Mr. Peck is considering?

Mr. LEHMAN. Yes, sir, I am. Keep in mind that both Mr. Peck and I are restricted by requirements that are imposed upon us by this body and by the Office of Management and Budget and so on and so forth.

Senator CHAFEE. Now, you're currently scattered among 18 buildings. What will this consolidation mean to you? Where will this put you?

Mr. LEHMAN. Well, part of the RFP is that we be consolidated so that our facilities are just more contiguous to one another. Just

to give you an example of that, because business in America is building and all of the new entrepreneurs that are coming around need more trademarks, our trademark office is expanding. We've run out of space for the trademark examiners. So we've had to move our public records office, where people can come in and search trademark information, away from where the trademark examiners are. Now, if a customer wants to go to the public records office, it's almost a mile between the two places.

Senator CHAFEE. Well, what will this do for you? I mean, I'm not sure whether you're moving into one building or you're moving into a series of contiguous buildings.

Mr. LEHMAN. We'll have a campus. It will be a campus-like setting, and I believe it is no more than eight buildings. We'll have eight buildings, and they'll all be right next to one another, basically.

Senator CHAFEE. And, Mr. Peck, you have three options of different sets of eight buildings, or whatever number of buildings? They vary, I presume, in the different options; is that right?

Mr. PECK. Mr. Chairman, the short answer is I don't quite know what we have in the offers, because we were prohibited by Federal law, both Mr. Lehman and me, from knowing exactly what the offers are at this point. That's information limited to our contracting officers.

What we do know is that, because the three offers have made it into phase two, they have met the conditions, which mean there are no more than eight buildings.

Senator CHAFEE. And that they be contiguous?

Mr. PECK. Yes, sir. That they be, as we said, in a campus environment on one contiguous site.

Senator CHAFEE. I must say, any organization that is trying to run a technical business scattered in 18 buildings strikes me as an inefficient setup.

The whole system has been attacked. Indeed, there will be other witnesses following you, as well as Senator McCain, with complaints about \$100 wastebaskets, shower curtains in the locker room costing \$250 apiece. You want to answer that, Mr. Peck, or do you want Mr. Lehman to answer?

Mr. PECK. No, I think we can both do that.

I'm not quite sure how those numbers got out, but I'd like to assure you and assure everyone else that we don't manage these numbers down to the wastebasket/shower curtain level. What we do, however, is manage a build-out allowance.

I can just tell you that, as I understand it—and Mr. Lehman may know more than I do—there was a study that showed, I think, that on some purchasing schedules you could find items that cost that much money.

The bottom line is that we have an allowance for build-out on this building which limits us to a total dollar value of about \$38.47 interior build-out cost from a cold, dark shell per rentable square foot, and I can tell you that is fully commensurate with the kinds of build-outs we have had on other similar projects. In fact, our standard GSA pricing from a cold, dark shell, we allow agencies, just as a general rule, not developed for this process, \$38.50.

So what we're telling you is that all of those costs per square foot are going to be in line.

The bottom line, I will tell you this, is this is sort of the business-like way to manage the Government. If PTO wanted to spend \$100 on wastebaskets, they wouldn't have enough money left to build out the walls, so they would have a serious problem.

Mr. LEHMAN. Senator, we're not going to spend \$100 on a wastebasket. We're going to buy our equipment such as that off the GSA schedule. Mr. Peck can supply that schedule to you and you can see exactly what they'll cost, and if that is a problem, then that is a Government-wide problem. We're not buying anything special that any other organization isn't going to have.

Mr. PECK. Let me be clear. Nowhere in our discussions, to my knowledge, at least none that I've been made aware of, has there ever been a discussion with PTO in which they have even requested items costing that much money or even near it.

My point before was to say that we manage an overall budget and we stay within it, which means that you have to spend reasonable market rate amounts for items like those that have been bandied about in the press.

Senator CHAFEE. What would you like to come out of this hearing, Mr. Peck? You've just said that one of the problems in the Government is that it takes so long for the Government to make up its mind. By contrast, in private industry, somebody can make a decision quickly. They don't have to go after all kinds of bids and specifications and all the laborious incidents that go with trying to run a building or several buildings.

You'd like this thing to be settled, I presume? Is that your goal?

Mr. PECK. Yes, sir. In the best of all possible worlds, everyone would go away from the hearing thinking that they had possibly gotten some misinformation or the numbers had not been explained on an apples-to-apples basis and that they were fully satisfied that we were getting the best possible deal for the taxpayers on this kind of a project and would then let us proceed, because I think we, quite honestly, owe it to the Patent and Trademark Office and to the people who have offered to us to be our vendors on this project.

Senator CHAFEE. Now, concerning these bids for the project—neither you nor Mr. Lehman can look at the bids, apparently. Is that correct? Who is going to make the decision?

Mr. PECK. There is a selection panel which goes through the offers to make sure that they meet our qualification standards, and then we go to best and final offers. That committee looks at them, prepares the quality of the proposals, and makes sure that they meet the dollar limits that we have.

I want to assure you that, merely because the Procurement Integrity Act prohibits us from knowing exactly what the offers are, we do know that the offers have to be within the prospectus limits set by the committee. And, as Mr. Lehman notes, that is a rental rate that is a bit lower than what we are paying today.

Senator CHAFEE. Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Lehman, on the fees that you charge, those are either set by or you are given authority by Congress to set those fees?

Mr. LEHMAN. They're set by the Congress, sir.

Senator SESSIONS. I've been through that in the State of Alabama, and there is a tendency among agencies to believe, if they've got money from fees, it's their money and they can spend it as they want to. I know of agencies in the State that have super buildings and high-paid employees and that sort of thing, because they feel that's their money. To me, it is a responsibility of Congress to make sure that if fees, incomes go up dramatically, they be properly apportioned. That's our responsibility.

Mr. LEHMAN. I couldn't agree with you more, Senator. You're exactly correct.

Senator SESSIONS. I consider it taxpayers' money. Do you disagree with that?

Mr. LEHMAN. Well, I think these fees are not paid by the taxpayers, in general, but I completely agree with you 100 percent that it is the responsibility of the Congress to oversee our organization. The Congress sets the fees, and it is the responsibility of the Congress to see that the fees are spent in a prudent manner. Of course, that's what this hearing is all about.

Senator SESSIONS. That, to me, is a fundamental thing, and sometimes departments and agencies feel like it is their money when it comes to them through fees, and I think that is not correct.

Mr. PECK, you've mentioned several times that the legislation authorizing this requires the new buildings to be cheaper. Are you prepared to personally guarantee that when we end up with this building it is going to be cheaper? Or is that law just something that floats in the air and can't be enforced?

Mr. PECK. No, sir. Senator, I want to be clear. What we are talking about is the rental rate that we are going to procure this space for, and the prospectus that you all approved only allows us to pay a rent that is below the rent per square foot that we're paying right now.

Senator SESSIONS. One way to keep the law right would be to have a cheaper structure and have more on the end payout by the agency on the inside, would it not? You could hide the cost of the building by shifting more to the build-out and away from the cost of the structure?

Mr. PECK. Well, but the cost of any building that you build is made up of those two components.

Senator SESSIONS. Are you saying that the two components together, that you understand the law cannot be more expensive than the present thing for just the building rental?

Mr. PECK. No, sir. It would be impossible. All I can tell you, all we can compare logically and realistically is the rental rate on the building, itself.

Senator SESSIONS. Let's be clear, then. So you're not asserting—the only thing you're asserting is that the shell of a building, that rate can't exceed the lawful rate, but if the cost of build-out and other costs go up, you can't be responsible for those?

Mr. PECK. Well, in this case there is a large amount of the fit-out that is included within the rent on this building. We are capitalizing some of the cost of build-out.

The SFO requires that the rent deliver habitable space, so that there is an apples-to-apples comparison here.

Let me make one other point. I think what you're trying to ask is: is this building going to be more expensive on a build-out basis than the existing facility? But it's impossible——

Senator SESSIONS. Total cost to taxpayers when the dust settles?

Mr. PECK. It's impossible to answer that question, in part because then you have to take quality into account. I mean, in the existing building.

Senator SESSIONS. No. I mean, you just said the cost would not go up, and we—and now you're telling me it's impossible to account for the cost——

Mr. PECK. No, sir.

Senator SESSIONS.—because of these variations.

Mr. PECK. No. The rental rate, itself, will be lower than the rental rate we pay now. That's what I said. That does include basic building fit-out.

What I was trying to say is it is impossible to compare the quality of the two buildings, and if someone were to say, "You could duplicate the existing buildings' inside," I don't even know that we could, because we can't build buildings any more that don't meet the life safety codes and the accessibility codes that we have today.

But there are a number of what are called "class C" buildings that the PTO occupies. They are substandard. We wouldn't lease them today in that condition. If, in fact, they are competing for the consolidation program, they'll have to be seriously upgraded.

Senator SESSIONS. Well, let me ask this. You said that there will be an \$88 million build-out, but you're aware, are you not, that the PTO proposes another \$29 million to that build-out, and that would total \$117 million and would come out with a total cost of \$58 per square foot, as opposed to the \$36 per square foot that's a GSA standard; is that correct?

Mr. PECK. You know, Senator Sessions, it is true that we have a base building cost that we allow any agency, and that is included in what we deliver to them for a certain rent.

Senator SESSIONS. And you're not concerned that Mr. Lehman uses his fee money and puts another \$29 million in there to make it more palatial?

Mr. PECK. Senator, I mean, the characterization as "palatial" aside, and one with which we disagree, it is our standard practice that agencies can upgrade beyond the standard, and agencies do that for various reasons, including certain specific mission requirements that are beyond a standard build-out.

Senator SESSIONS. Could I ask one yes or no question?

Senator CHAFEE. All right.

Senator SESSIONS. The GSA standard that you mentioned, 36 or 30-some dollars, is that a ceiling or just a standard? It could go above that, could it not?

Mr. PECK. It is a standard, but in this case that standard is included in the \$88 million allowance, which we have total for interior construction, is included in this particular lease rate.

Senator CHAFEE. Senator Smith?

**OPENING STATEMENT OF HON. ROBERT SMITH,  
U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator SMITH. Thank you, Mr. Chairman.



The Inspector General, although they were supportive of your request for additional space, were critical about the PTO process, describing it as flawed because the lease development lacks a defined cost ceiling.

Could you comment on each one of these items, just specifically in that analysis by the Inspector General—the first one that PTO needs to finalize its space requirements. What's the problem with that?

Mr. LEHMAN. There's no problem with that. And, in fact, there's no problem with this Inspector General's report, and one of the good things about Inspector General's report is that they capture things that you should fix, and we have moved to fix those things and to establish specific limitations and ceilings on what we will spend.

And, indeed, not only are we doing that internally, but we are perfectly happy with the amendment, which I believe was passed in the appropriations process. There was an amendment by Senator Inhofe, and it establishes just such a ceiling of the type recommended by the Inspector General. And, furthermore, the Commerce Department Inspector General is a witness at this hearing, and I think he will be able to explain that more thoroughly.

I have absolutely no disagreements with their recommendations and we will do everything we can to accept them.

Senator SMITH. Well, recommendations, in general, but there are some criticisms out there. I just mentioned one. I'll just mention a couple of others.

PTO has not reached an agreement with its bargaining unit employees over working conditions related to those space requirements. That's a criticism. PTO paid rent on vacant space for approximately 8 months from March to October, 1997. PTO had a large inventory of vacant space that was rented and inappropriately set aside for reorganization. As a result, PTO carried more than 73,000 occupiable square feet of vacant space. The total cost of this error was almost \$1.5 million, because PTO paid an average of \$30 per square foot to rent vacant space. That doesn't sound like a positive comment to me.

Mr. LEHMAN. Well, Senator, I think you should ask the Inspector General, who is going to testify specifically about it.

Senator SMITH. But you said you agreed with everything in the report. That's why I'm asking you. You agree with that? Is that a good thing?

Mr. LEHMAN. I'm not—you know, the reason we have an Inspector General is to identify areas where we need to make improvements, and we have worked with our Inspector General's office to do exactly that.

Now, when one talks about some of these specific things, I would just say a word about the fact that we might have vacant space over a period of time. Keep in mind that we are an organization that is in 18 buildings that has over 5,000 employees.

In fact, one of the difficulties that we have, precisely because we do not have a new campus and we're a growing facility, is that sometimes we have to go out in the market and get space when it is available so that we will have it when we need it to meet our

needs, and that's one of the reasons why we need to regularize this entire process.

As you observed yourself, Senator, the bottom line of the Inspector General's report, which was one of eight different evaluations that was done by someone other than the PTO, itself, was that pretty much everything that we're doing is reasonable and on target. And where there are mistakes—and the mistakes have been relatively minor—we are moving to correct them.

Senator SMITH. Well, I agree with you there are other analyses that might differ, but the bottom line is it just seems to me that you're asking us to approve something that's open ended.

Mr. LEHMAN. Senator, you're just wrong about that. We're not—

Senator SMITH. Well, tell me what the final—

Mr. LEHMAN. First of all, we have a—

Senator SMITH. What is the final cost?

Mr. LEHMAN.—amendment which I believe has passed the Senate Appropriations Committee which very specifically sets a cap on what we can expend, a specific cap on the build-out costs, and that cap is consistent with the standard Federal build-out for agencies such as ours.

Senator SMITH. But there are differences about that. That's where all those lists that Senator Chafee I think referred to, those \$250 shower curtains and so forth—basically, that means that if you expend that up to the cap, you could spend that much for a shower curtain, or whatever else was listed in that—

Mr. LEHMAN. Well, I suppose, Senator, that we could spend \$1,000 for a shower curtain and we could do all kinds of things, but it's almost impossible for me—and I'm sure that's true of you, as well—to respond to somebody who might suggest that you wish to outfit your office with a \$1,000 shower curtain when you have no intention and never have had of doing so.

It's very difficult for me—

Senator SMITH. Mr. Lehman—

Mr. LEHMAN.—to respond to that kind of—

Senator SMITH. Mr. Lehman, with all due respect, what that means is they're talking about the overall figure, and in the overall figure and in the cost, if you were to spend that amount of money, those are the kinds of costs that could be used to furnish the interior of your building.

Mr. LEHMAN. Well, Senator—

Senator SMITH. That's the point.

Mr. LEHMAN.—I'm not under oath, but if I were—and I would be willing—it still would be a violation of 18 USC 1001—I'm just going to swear to you right now we are not going to spend that kind of money for those kinds of amenities. Period.

Senator SMITH. I didn't say that you were. But the point I'm trying to make is those figures on those individual items are coming about because if, in fact, you were to spend the amount of money that's outlined within your cap, you could spend that much for those kinds of things, which means you're probably high on the cap. That's what I read from it.

Mr. LEHMAN. Senator, if you believe that we're high on it, we'd be happy to work with you, and I'm sure Mr. Peck would be, and I'm sure the Appropriations Committee would be.

Senator SMITH. Well, you have to work with us.

Mr. LEHMAN. Yes, and——

Senator SMITH. That's the problem. I get the attitude here that maybe you don't have to work with us, but you do have to work with us——

Mr. LEHMAN. Well, Senator, I don't think that's what I've suggested.

Senator SMITH.——because we control the purse strings.

Mr. LEHMAN. I said that we'd be more than willing to do that. In fact, we are going to have ongoing oversight by the Appropriations Committee of every dime that we spend in this build-out process, and we will work with them and we will work with your staff to assure you, over the next 20 years of this lease, that we do not spend any more money than——

Senator SMITH. But you're asking——

Mr. LEHMAN.——would be standard for facilities of this type.

Senator SMITH. But you're asking us to construct—you're asking us to lease rather than construct, at a cost that would be higher than if we constructed. I'm not making the case one way or the other whether we should be——

Mr. LEHMAN. Senator, that was not my decision. That was the decision of the Congress that we should lease the building.

Senator SMITH. Well, if the building space would save PTO millions, what's the justification for leasing?

Mr. LEHMAN. Senator, you'll have to ask your colleagues in Congress on that.

Senator SMITH. What's your answer? Do you agree with that or not? Maybe the Congress——

Mr. LEHMAN. I can tell you what the justification is.

Senator SMITH. We've made mistakes before; maybe we made one on that.

Mr. LEHMAN. The justification is that we are under Federal accounting procedures. Were we to acquire a building, that would mean that the entire cost of acquisition would have to go to the bottom line of the Federal budget for that given year, which would probably be in the neighborhood of \$700 million, and that would require either that the Federal budget would have to go up by \$700 million for that year or there would have to be offsets in other Federal programs.

I think, if you'll consult with your colleagues on the Appropriations Committees, they'll inform you that most of them don't want to have to go through that process, and therefore they have ordered and directed us to lease a building.

Senator SMITH. Just one final question. Senator McCain says—I don't want to preempt his statement here, but in his statement he says that it is going to cost \$117 million to finish the interior of the building with extravagant amenities. Is that a correct or an incorrect——

Mr. LEHMAN. That is an incorrect statement. If you want to know specifically what kind of things we're talking about, we're talking about mission-specific items, such as locks on doors.

And, by the way, I think it should be noted that patent applications are secret until they are issued, and so security is a very significant problem, and if you're a high-technology company you don't exactly want to have a door that doesn't have a lock on it. We have to have power back up for our computer system. If our computers go down, America's high-technology companies which rely on us will be very severely hampered.

Improved lighting for examination work—when you are a patent examiner and you are looking at complex technological drawings, you can't have the kind of lighting that you would have in an ordinary office. Those are the kinds of things that we're talking about.

The issues such as you've talked about, granite materials and so on and so forth, those are included in the underlying lease agreement. They are not part of the build-out cost, and those are the kinds of things that Mr. Peck was talking about where the RFP requires that we have durable materials.

Our extra build-out cost won't have any of that kind of material in them. It will be things like backups for our computer system, locks on the doors, enhanced lighting, and that sort of thing.

Senator CHAFEE. Senator Sessions had a question.

Senator SESSIONS. Mr. Lehman, there are \$88 million to build out, and then there is above build-out of \$29 million that you intend to expend. Is that agency money from fees?

Mr. LEHMAN. That is correct. And that's the material that I was just talking about.

Senator SESSIONS. Let me ask you, is it your opinion that you don't need authorization of Congress to spend that money?

Mr. LEHMAN. No, it's not. I indicated to you before that that has to go through the Appropriations Committee and it will be reviewed on an annual basis. If Congress disagrees with it, they will have a chance to—with our request—keep in mind, this will be a request that we will make, and it will be the appropriations committees and then the entire Congress that will determine when—

Senator SESSIONS. That's right. It will be our neck on the line, and so that's why we've got to be responsible.

Mr. LEHMAN. And you are.

Senator SESSIONS. So we're going to be responsible presumably, but the IG—

Mr. LEHMAN. That's why it is a very good thing to have these hearings and answer these questions.

Senator SESSIONS. I just want to mention something. The Inspector General says that you need Congressional approval. It says, by resolution adopted by Congress—I don't know that that means the Appropriations Committee. They've got a lot to do. I'm not sure they micromanage a building in Virginia. So apparently Congress has not approved that, and we've got to deal with that issue, and that would bring the cost of build-out on a square footage basis to \$58, which I understand from GSA exceeds any other building ever built. The National Oceanic and Atmospheric Administration was at \$45. You add the \$29 billion, the build-out would be \$58 per square foot. That's something—

Mr. LEHMAN. For the record, Senator, I believe that's just factually untrue and Commissioner Peck could respond to that.

Mr. PECK. Senator, I would have to get you numbers on other build-outs. But, again, we're comparing apples and oranges here. It is standard practice in commercial real estate that a landlord—and GSA in this case is in the position of being a landlord to PTO—offers a certain allowance within the rent for what is called “standard fit-out,” and then the tenant, whether it's a law firm, which I'm familiar with, or anybody else, then sometimes pays for above standards for particular things.

Senator SESSIONS. I know, but we've got to figure out how much this building costs, and you all are confusing us, and we're trying to get the total cost.

Mr. PECK. But, sir, we have given you specific dollar amounts. Let me just suggest there are two ways in which you manage this space so that you can do it efficiently, without having the hire another million Federal employees to dog every time someone spends a dime, and that is this: you take an amount of money—in this case \$88 million—and you say that is the amount of money it should cost to fit out two-point-something million square feet of space, and you say that's what you've got, and they add \$29 million. That can be overseen by the appropriations folks. It's about another \$13 or \$14 a foot.

Senator SESSIONS. You're not responsible for that?

Mr. PECK. No.

Senator SESSIONS. GSA doesn't worry about that?

Mr. PECK. But I'm telling you, sir, that that is also, in the commercial sector, a fairly standard amount of money per square foot for above-standard build-out.

And what you then say to people—and this has got to be the way we manage this business—is to say, “That is a reasonable amount of money per square foot.” If that is the limit under which they go, they can make choices within it, but somehow they've got to get within that money to workable office space.

And we have set that level. I can just tell you the \$88 million is a level at which someone cannot produce workable office space with lavish finishes and outrageous amenities. It just can't be done.

Senator SESSIONS. It's going to be \$117 million, not 88.

Mr. PECK. Yes, sir, but, like I said, you can use numbers that amount to \$58, and that is an amount of money which, if you're starting from a cold, dark shell, you will find will produce you a standard headquarters quality office building in this town, or at least in this town's costs, and that's what we are allowing them to build.

Senator SESSIONS. Well, there are other costs, too, such as moving and furniture and all that, transportation. That will be added to the total cost.

Senator CHAFEE. Senator Smith, do you have any more questions?

Senator SMITH. No, I don't, Mr. Chairman.

Senator CHAFEE. I have a Senate statement here from Senator Hatch that I would like to put in the record.

[The prepared statement of Senator Hatch follows:]

## STATEMENT OF HON. ORRIN HATCH, U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, in my capacity as Chairman of the Senate Judiciary Committee, the Committee in Senate responsible for overseeing the management of the Patent and Trademark Office (PTO), I respectfully submit this written statement for the record. I appreciate having the opportunity to provide this brief statement to you, Mr. Chairman, and the other members of on Environment and Public Works' Subcommittee on Transportation and Infrastructure. The PTO consolidated space procurement is an important and necessary project, and I am taking this opportunity to express my support for the project.

Today, the PTO has over 5,000 employees, many of whom are housed in substandard office space that does not support state-of-the-art automation or barrier-free access. PTO operations are presently distributed among 17 buildings, some as much as a mile apart. In order to meet the constantly increasing demand for intellectual property protection, the PTO will find it necessary to hire approximately 2000 patent examiners, trademark attorneys and support staff during the next several years. Recognizing that its present leases are expiring, that additional space is required to continue serving its customers, and that its present distributed campus adds costs due to inefficiency, the PTO sought approval for procurement of a new facility. In 1995, Congress authorized the PTO to begin competitive procurement of a long-term lease for consolidated space.

I am mindful that concerns have been raised about the scope, cost and management of this procurement. It is important to note that PTO has been extremely responsible in addressing concerns raised by reviews of the project. In addition, Congress has placed certain requirements on PTO to ensure that the project is well managed. Initially, a decision was made that outright purchase of a facility to house PTO was not feasible. Later, the Inhofe-Brownback amendment to the Commerce Justice State Appropriation Bill placed a ceiling on project build-out and move.

The PTO's operations are funded entirely by user fees. These users understand the challenges PTO faces now and in the future, filings increase. PTO will find itself increasingly reliant upon new technology and redesigned work processes to meet the increasing demand for its services. PTO has conscientiously examined its future requirements in developing its approach to the space consolidation. All of the PTO's major user groups fully support the new lease project because it will promote efficiency and productivity at a lower cost.

Since this project began, opponents have raised many issues that mischaracterize aspects of project. On result of the on-going debate has been confirmation of PTO's approach through a number of independent studies. Both the Commerce Inspector general and Jefferson Solutions, an independent consulting firm, reached similar conclusions—that the project is necessary, well managed, and likely to save money for PTO and its fee-paying customers.

PTO's current landlord has a strong interest in keeping PTO as an occupant. Presently, PTO is paying over \$40 million dollars a year for its space. Our concern should be to insure that PTO's future space is selected through a competitive process that ensures good value for the money paid, wherever PTO is located. Even considering extension of PTO's present leases through a sole-source procurement raises the question—is it likely the government will get the best value in a noncompetitive environment? Our American system has taught us that competition gives us improved quality at a lower price.

I am, of course, concerned about the potential for cost over-runs and extravagance. Nothing I have seen so far in PTO's approach leads me to believe that they are seeking a lavish, unreasonable facility. Although critics have taken certain information out of context to challenge the overall project, I am confident that PTO's prospectus is similar in nature to other government and private industry facilities. I am certain, also, that PTO has no intention of paying a premium for lavish grounds or expensive furniture. Everything I have learned about the project leads me to the conclusion that PTO and GSA have been committed to procuring space that provides necessary employee and customer amenities in an efficient and cost-saving facility. I am also confident that Congress will continue to monitor the progress of the project to ensure that costs are reasonable and controlled.

I have every faith that the management at PTO and GSA will bring this project to successful completion. We must not lose sight of the fact this project will result in net savings of \$72 million to PTO's fee-paying customers.

Thank you for the opportunity to express my support. I request that my recent remarks (S. 8737) in the Congressional Record from July 22, 1998, on this project be included with this statement.

[From the Congressional Record, July 22, 1998, Pages 8735-39]

McCAIN AMENDMENT NO. 3251

On page 62, strike "Provided further," on line 3 and all that follows through line 16 and insert the following: "Provided further, That none of the funds appropriated or otherwise made available under this Act or under any other provision of law may be obligated or expended by the Secretary of Commerce, through the Patent and Trademark Office, to plan for the design, construction, or lease of any new facility for that office until the date that is 90 days after the date of submission to Congress by the Administrator of General Services of a report on the results of a cost-benefit analysis that analyzes the costs versus the benefits of relocating the Patent and Trademark Office to a new facility, and that includes an analysis of the cost associated with leasing, in comparison with the cost of any lease-purchase, Federal construction, or other alternative for new space for the Patent and Trademark Office and a recommendation on the most cost-effective option for consolidating the Patent and Trademark Office: Provided further, That the report submitted by the Administrator of General Services shall consider any appropriate location or facility for the Patent and Trademark Office, and shall not be limited to any geographic region: Provided further, That the Administrator of General Services shall submit the report to Congress not later than May 1, 1999."

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Mr. HATCH. Mr. President, I rise in opposition to the amendment proposed by the Senator from Arizona. If adopted, the McCain amendment would result in needless, costly delays in the user process to obtain better facilities for the Patent and Trademark Office.

Look, we studied this thing to death. We know doggone well if this is delayed again, you are only going to have one bidder instead of three, and there is the question of whether that one bidder will do anything to save any money.

In fact, the amendment of the distinguished Senator from Arizona would cost a lot more money. Let me make my case.

The PTO procurement process has been studied to death. We don't need another study. Let me catalog for you the attention that has been paid to this procurement process. The PTO procurement process has been the subject of two comprehensive studies: one by the Inspector General of the Department of Commerce and another by an independent consultant who reported to the Secretary of Commerce. The independent consultant was Jefferson Solutions, which is headed by the former director of OMB's Office of Procurement Policy in the Reagan and Carter administrations. Both studies agreed that the competitive lease procurement should proceed so that the PTO can obtain the benefits of competition. Let me emphasize that, from the start, the PTO procurement process followed all the rules and complied with all the safeguards in the Standard Federal Government Procurement Procedures.

These studies are in addition to the normal Government procedures. Of course, they do provide for competitive bidding. Mr. President, Senator McCain's amendment calls for a study of the benefits of leasing versus purchase, Federal construction, and other housing alternatives, such as lease purchase. This has already been done.

The GSA, the Department of Commerce, and the OMB thoroughly evaluated the options before submitting the lease prospectus for congressional approval. Both the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure concurred, when the prospectus was authorized in the fall of 1995, and in light of the limited funds available for capital investment and operating lease of the PTO, that is in the best interest of the PTO's fee-paying customers, which the distinguished Senator from Virginia has raised.

Furthermore, in a colloquy between Senators Gregg and Warner conducted on the Senate floor during the vote on H.R. 3579, Senator Gregg agreed that no funds would be available in the foreseeable future to purchase or construct a facility to house the PTO.

H.R. 3579, which became law, required the Secretary of Commerce to review the project and submit a report to Congress by March of 1998. This is the Jefferson Solutions report that I referred to earlier.

The cost-benefit analysis that accompanied it, called the Deva report, showed the PTO will save \$72 million over the 20-year life of the lease by consolidating.

I don't know about the shower curtains, but that is a lot of money to be saving compared to what we would lose if we went ahead with the amendment of the Senator from Arizona. I know he is trying to save money, and I have no problem with that.

The Jefferson Solutions report found that the consolidation of PTO space through a competitive lease would improve workflow efficiencies and improve the environment for employee retention, as well as reduce costs.

In addition to these studies and reviews, the procurement process has been tested judicially. A 1997 protest by the existing landlord alleging improprieties in the terms and conditions of the procurement was dismissed. Similarly, an unfair labor practice complaint filed by one of the PTO's unions was dismissed earlier this year.

Given these numerous studies, reviews, and court tests, why is it that we are here debating this issue yet once again? There appears to be a campaign to delay the procurement process, and I have to ask who is behind it. I don't think it is a matter of \$250 shower curtains.

I know that Senator McCain is not motivated by a desire to merely delay. I am sure he has real concerns based on facts as he views them. But the fact of the matter is, he is talking about peanuts compared to the millions and millions of dollars that will be lost if we do another study rather than go ahead after all of this work has been done, all the studies have been done. It is crazy. Nevertheless, there has been an ongoing campaign to delay this.

Who is behind it? Is it the parties who use the PTO services? No. The parties who use the PTO are the patent applicants, patentees, and trademark registrants. They oppose this amendment, and they want the procurement process to go ahead.

But, Mr. President, the current landlord of the PTO makes over \$40 million a year from renting space to the PTO. Would 1 year's additional rent be worth mounting a campaign of delay? That is \$40 million plus the \$72 million we are talking about we lose by another study. I think you can buy a lot of shower curtains for that.

It would be to the landlord's benefit to delay it. That is why he has hired a major lobbying firm to kill this process. It is not the public demanding a delay, it is the PTO's current landlord. I can hardly blame him, because he will make \$40 million more. But I would blame us if we permitted that to go on just because of some shower curtains and a few other things that the distinguished Senator from Arizona has mentioned.

I conclude, Mr. President, with an assurance that I am as concerned as anyone with cost overruns and lavish spending in the procurement process. I am disturbed by allegations of amphitheaters, exercise tracks, and high-priced furniture. I pledge to work with anyone who has a concern about specific excesses in the procurement prospectus. In fact, I intend to support the Inhofe-Brownback amendment that cuts back on build-out appropriations and the ability of the PTO to get more money for moving expenses. Congress should investigate these particular allegations and take a surgical approach. Another comprehensive study, however, is not the answer.

Let me just say for the benefit of the distinguished Senator from Arizona, he may have some points here, but they are very, very minor in comparison to the moneys that will be saved by moving ahead rather than having another delay by losing \$72 million on one side and \$40 million on the other over a few shower curtains. It just seems penny-wise and pound-foolish. I am against this amendment. I hope we defeat it.

Senator CHAFEE. Senator McCain has been delayed due to his duties in managing the Federal Aviation Administration reauthorization bill, and sends his apologies that he couldn't be here. He has a statement which we'll include within the record.

[The prepared statement of Senator McCain follows:]

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM THE STATE OF ARIZONA

Mr. Chairman, and the distinguished ranking member, thank you for the opportunity to address the Transportation and Infrastructure Subcommittee on the relocation of the U.S. Patent and Trademark Office. I appreciate the generosity of the Senate Environment and Public Works Committee in allowing me to speak on the Patent and Trademark Office's proposed relocation.

The proposed Patent and Trademark Office building complex is shamefully expensive and extravagant. In addition, in putting the proposal together, the Congress limited the Patent and Trademark Office to considering only sites in Northern Virginia, which is certainly not an inexpensive area for construction and leasing of office space.

The PTO consolidation is estimated to cost the taxpayers approximately \$1.6 billion. About \$1.3 billion of this amount is to pay for a 20-year lease of a new, 2-million square-foot facility somewhere in northern Virginia. The additional \$250 million is what the Patent and Trademark Office proposes to spend to "improve" the build-



ing, to bring it up to the PTO's standards—which appears to mean extravagant and luxurious amenities that most of America's businesses do not provide to even their senior executives.

PTO plans to lease a 2-million square-foot building "shell" -which is essentially a structure with walls, ceilings, floors, and windows, but without electrical wiring, computer and telecommunications lines, carpeting, furniture, and all the other necessary interior fixtures. PTO will not have to pay the costs of constructing the building "shell." However, the PTO plans to spend an outrageous amount of taxpayer dollars to bring the building up to its "standards."

PTO is authorized to spend up to \$88 million to "build-out" the shell. This includes such necessary items as carpeting, electrical and plumbing fixtures, as well as some necessary environmental control upgrades to support the computer-intensive work of the office. Compared to the government's "standard" rate for this type of expenditure, "building out" the PTO building will cost 20 percent more than most government buildings.

And on top of that \$88 million, the PTO also plans to spend another \$29 million for extravagant amenities, including extra elevators, granite and marble decor, jogging and walking trails, sculpture gardens, and outdoor amphitheaters.

That's a total of \$117 million to finish the interior of the building with extravagant amenities. On a per-square foot basis, that's \$58 per square foot of occupiable space—or 58 percent over the government's standard.

But that's not all. The PTO also plans to spend another \$135 million to move into the building, install telecommunications equipment, and buy furniture. Almost half of this money is for the purchase of new furniture and furnishings, including \$250 shower curtains, \$1,200 chairs, \$1,000 coat racks, and \$562 mail room stools.

Altogether, the PTO will pay \$252 million to bring the building up to its "standards"—standards which far exceed the government's norms and which can only be called luxurious by any standard.

After spending \$252 million to spruce up the premises, the PTO is then proposing to pay \$57 million per year for a 20-year lease—over and above the costs of the "improvements" listed above. That is approximately \$1.3 billion in lease payments alone over the next 20 years.

The PTO project is expected to cost the taxpayers almost \$1.6 billion—and we won't even own the building at the end of 20 years.

This deal will be worse than the Ronald Reagan building deal. Remember how the cost of the Ronald Reagan building skyrocketed? That building, which is three million square feet, began as a \$362 million building, and ended up costing \$800 million. That's a huge cost increase.

Ironically, the new PTO building will be smaller than the Reagan building—700,000 square feet smaller. And it is much more expensive. We spent \$800 million on the Reagan Building, but at least we own a building that is designed to last 200 years and that includes rentable space to offset its costs.

The original language contained in the Commerce State Justice Appropriations bill did not impose a ceiling on the potential costs of the PTO consolidation. Fortunately, the Senate accepted an amendment which capped the standard build-out cost at the \$36.69 per occupiable square foot, limited moving cost to \$135,000,000, and capped above standard build-out cost at \$29,000,000.

Even with these spending caps, I still have serious concerns regarding the PTO consolidation. The Citizens Against Government Waste, the National Taxpayers Union, the Patent Office Professional Association, and the Alliance for American Innovation also have serious concerns about the enormous cost of this project. In short, just because we can squeeze these extravagancies under the newly imposed spending caps, it does not justify doing so.

This project was destined to become a fiscal nightmare. Our first mistake was that we did not allow ourselves to look at all possible locations to determine the most cost-effective facility to house the new PTO complex. Instead, we only looked at sites in northern Virginia.

I am aware that there are Federal regulations that would hold PTO responsible for relocation expenses for employees if the agency moves more than 10 miles. This alone should not restrict us to only consider PTO sites in Northern Virginia. Who knows, the cost benefits of relocating to a non-Northern Virginia site may outweigh the additional cost incurred by the relocation regulations. The problem is, we will never know, because we never looked at sites outside of Northern Virginia.

The sheer excess in the PTO's proposal for the building's amenities is unbelievable—\$250 shower curtains, \$1000 coat racks, and miles of walking and jogging paths. Tax dollars should be spent on processing patent applications, not extravagant surroundings. We should not be spending Americans hard-earned tax dollars on extravagant perks. We should be spending tax dollars on processing taxpayers'

patent applications. And we should make sure we spend them in the most cost-effective manner possible by looking at all possible locations for government facilities, not just one region.

I am not trying to kill this project. Maybe PTO does need to consolidate. However, I think that we have a responsibility to act to insure that the cost of this project is justified and kept in check. PTO states there are no funds in the foreseeable future to construct Federal buildings. If so, and a lease is our only alternative, then we should enter into a sensible lease which does not waste taxpayers' money on unnecessary extravagancies.

I ask my colleagues on the Senate Environment and Public Works Committee to revisit the PTO consolidation without any geographic limitations, and to address the runaway cost, contained in this consolidation plan.

Senator CHAFEE. It's my understanding, Mr. Peck, that in 1996, PTO's current landlord, the Smith companies, testified that they were pleased with the manner in which this solicitation had been managed by the PTO and the GSA. Am I correct in that?

Mr. PECK. Yes, sir.

Senator CHAFEE. That was June 25, 1996, testimony before this committee.

Mr. PECK. Yes, sir. In fact, I will note that at one point we changed some of the terms of this solicitation in response to a request from them, a statement from them that some of the terms they felt unfairly disadvantaged existing buildings. So I think that we have been fair to them and to the other competitors.

Senator CHAFEE. All right. Thank you both very much.

Mr. LEHMAN AND Mr. Peck, I wonder—we'll go on to the next panel. Senator Warner will be here. He had a couple of questions he wanted to ask you. If you could wait, then we'll call you back.

Mr. PECK. Yes, sir. We will. Thank you.

Senator CHAFEE. Why don't you just wait and take a seat there.

Mr. LEHMAN. Thank you.

Senator CHAFEE. All right. Fine.

And the next panel will be Mr. Kirk, Executive Director, American Intellectual Property Lawyers Association; Mr. Sepp, Vice President for Communications, National Taxpayers Union; and Mr. Dave Williams of Citizens Against Government Waste.

If you gentlemen will please come forward, and if you'd limit your testimony to 5 minutes each, we'll move right along here.

Senator SMITH. Mr. Chairman, if I may just make a remark while they're getting seated there.

You know, we all try to do a job up here in terms of understanding numbers. We get the numbers, as I think Senator Sessions commented on, that are very confusing.

We want to do the right thing to try to save the taxpayers dollars, and I'm not saying that at some point in the discussions that we, as Senators, don't get a bit argumentative, but I resent the fact that Federal employees come here before the committee and are argumentative and, frankly, bordering on disrespectful in terms of responding to the questions that we ask. I don't think that's good policy, certainly not good politics if you want your building, and, you know, I think maybe a lesson or two could be learned in diplomacy here. I mean, this just doesn't make sense. We're just trying to—we have to answer ultimately to the taxpayers, and that's the only people I owe responsibility to.

You know, if there's \$1,000 in there that's too much and we can find it, we ought to get it out. And when somebody throws a sheet

of paper out here that says that shower curtains are \$250—you know, years ago we had the \$800 hammer and all that. We took a drilling for that. We have every right to ask these questions, even if we've asked them before and even if you've answered them before.

And, you know, I don't appreciate it. And I think—I find it distasteful. And, frankly, it encourages me not to support the project for that very reason.

Senator CHAFEE. Well, your words I'm sure have been well listened to.

Now let's go on to Mr. Kirk. Won't you proceed please, Mr. Kirk?

**STATEMENT OF MICHAEL KIRK, EXECUTIVE DIRECTOR,  
AMERICAN INTELLECTUAL PROPERTY LAWYERS ASSOCIATION,  
ARLINGTON, VIRGINIA**

Mr. KIRK. Thank you, Mr. Chairman. I appreciate the opportunity to appear here today to present the views of the American Intellectual Property Law Association on the efforts of the PTO to procure consolidated space for its operations.

The majority of the 10,000 members of AIPLA interact with patent examiners, trademark examiners, and their clerical support staff on a continuing basis. They know from these contacts that many of the employees are forced to work in cramped quarters with inadequate furnishings and equipment to do their jobs.

To alleviate these problems, we believe——

Senator CHAFEE. Mr. Kirk, I just want to tell you that you've got a nine-page statement here——

Mr. KIRK. And I'll be through in 5 minutes.

Senator CHAFEE. All right. I'm sure you will be.

[Laughter.]

Mr. KIRK. All right.

We believe that the Office should acquire adequate space. What we did was to consider what sorts of criteria we believe the Office should adopt. Foremost, the facility should be competitively procured, taking price and quality into consideration. It should be convenient to Metro Rail. It should be automation ready. It should provide private offices for examiners, but reflect the private enterprise trend for downsizing and standardizing office size. It should provide employees with reasonable amenities, compared to those in the private sector, including parking, health facilities, day care, and reasonably priced eating facilities. It should be compact and inter-connected and, with the approval of Congress, it should have such above-standard items as are customary in business—for example, uninterrupted power supplies for computer systems and the like.

We believe that the SFO generally comports with these guidelines; therefore, we believe the solicitation should proceed under the watchful eyes of Congress and the user community.

We are aware of a campaign over the last year and a half to convince Congress that the SFO is too extravagant. We obtained a written list of concerns from the current landlord's lobbyist and asked the Office to respond. We invited representatives of Congressional staff and bar associations to evaluate the concerns and the response.

When the allegations were illuminated with facts, the concerns were not only unpersuasive, but frequently misleading.

We've heard this afternoon about the \$88 million number to outfit the interior of the new facilities. It is our understanding that the successful bidder must pay this, and it must come out of the rent that he receives from the PTO, and this rent, as we've heard, is going to be less than the current rent paid by the PTO to the current landlord.

We've heard that the patent examiner's union opposes the move to the new complex; however, the opponents don't mention the fact that the trademark examiner's union and the clerical employees union support the move.

The day care facility, for example, would be especially beneficial to trademark examiners and clerical employees, both of which groups have high numbers of female employees who typically need access to affordable health care and day care facilities in order to be able to work outside the home.

Those opposed to the consolidation talk about the fact that it is going to cost \$1.3 billion to lease, not own, the facility. Let's be clear about this. If the PTO stays in its present decentralized, aging facilities, it will spend at least \$1.3 billion in lease charges over the next 20 years.

Moreover, while the PTO is not going to own the building, as Senator Warner and Senator Gregg in a colloquy on the Senate floor commented, this is the only viable option, and we take them at their word.

We heard earlier about the \$250 shower curtains and the \$4,000 desks, etc. We would agree that these estimates are unfortunate. It is our understanding, however, that they were given as worst-case scenarios intended to provide an estimate of what it would cost to move, not an intent to go out and buy.

More importantly, even with these unfortunately high estimates, the Deva Report still projects that there will be a \$72 million savings from this procurement.

Mr. Chairman, we would like very much for this procurement to go ahead unabated, and we would strongly urge this subcommittee to allow that to happen.

I have been authorized by the Intellectual Property Owners, whose members obtain 30 percent of all U.S. patents, and the Intellectual Property Law Section of the American Bar Association to state that they agree with this conclusion.

Thank you, sir.

Senator CHAFEE. Thank you very much, Mr. Kirk.

Mr. Sepp, vice president for communications, National Taxpayers Union.

**STATEMENT OF PETER J. SEPP, VICE PRESIDENT FOR COMMUNICATIONS, NATIONAL TAXPAYERS UNION, ALEXANDRIA, VA**

Mr. SEPP. Thank you.

On behalf of our 300,000 members, I am——

Senator CHAFEE. You have the same 5 minutes, Mr. Sepp, as Mr. Kirk.

Mr. SEPP. Indeed.

Senator CHAFEE. Thank you.

Mr. SEPP. I am deeply grateful for the opportunity to testify today. In holding these hearings, you've once again demonstrated your interest in fiscally responsible procurement policies.

Since our founding in 1969, we've taken positions on numerous public works projects. Our only interest in this debate is to protect Federal dollars and taxpayers.

While we believe an upgrade of PTO's present facilities is the most desirable of the current alternatives, we are certainly not wedded to that concept. We could also support additional options at other sites or building rather than leasing should further study prove any of these courses to be more cost effective.

Some have asked why my organization is involved in this issue. No. 1, part of our mission is to represent the concerns of all taxpayers, whether they are families, businesses, or small inventors. I'm sure we both recognize that ultimately every American is affected by the tax burden on his or her fellow citizens.

No. 2, small businesses and entrepreneurs provide the fuel that keeps our economic engine running in the race for economic vitality. Even a minor increase in patent fees could obstruct the flow of this fuel and leave us stranded. How many links in the chain of minor discoveries that lead to major breakthroughs would be broken? How much would our Nation's economic growth rate decline? Only an economist can answer these questions, but I certainly would not place a bet on our economy's future just to find out how much the market of intellectual property will bear.

No. 3, we've been assured that PTO's fee structure could accommodate the cost surrounding the new headquarters, but history has a different tale to tell. Government financial experts assured us that deposit insurance fees would more than cover the costs of any problems incurred by savings and loans. In the end, tens of billions of dollars came out of our wallets to bail out S&Ls.

Granted, the Senate's recent decision to cap costs of the PTO plan at \$1.3 billion is well-intentioned, but the road to fiscal purgatory is paved with these intentions, and it is also littered with these kinds of cost caps.

The Ronald Reagan building experienced cost overruns exceeding 200 percent. Before Congress terminated the project, the Super Collider's price had risen well over 50 percent. Just 2 days ago the "Washington Post" reported that NASA is seeking a \$1.2 billion bailout of the space station project due to Russia's financial problems.

From roads to courthouses to scientific research, an all-too-familiar pattern has emerged. Congress is told that too much has been spent to pull the plug now, and taxpayers are left to make up the difference between projections and hard reality.

Finally, No. 4, the lessons learned or not learned from the PTO project will have a tremendous impact on every subsequent initiative on Federal office space, many of which will involve general revenue spending. Each and every American taxpayer, therefore, has a direct stake in ensuring that PTO's relocation serves as fiscally responsible.

Having explained our interest in the PTO relocation proposal, I'd like to outline five of our specific concerns.

No. 1, costs. Items that could drive up costs include possible exercise facilities and trails, in-house cafeterias, and expensive outdoor decor. Now, the Commerce Department argues that many of these amenities already exist at the present complex and others won't necessarily go forward. Absent from this explanation is whether or not additional amenities should be built just because they can be provided under the existing cap.

Now, I do not suggest that a U.S. Government building with such an important mission should look like a Soviet-style block house, but taxpayers and PTO customers—many of them, at least—seem to believe that a more appropriate balance between form and function can apply here, as well.

No. 2, our reading of PTO's blueprint suggests that earlier cost analyses may have been biased toward a predetermined conclusion. One report comparing relocation versus renovation assumes that many features of the new buildings would have to be grafted onto remodeled space. Perfectly functional restrooms and elevators in the existing facilities would be rendered useless in order to comply with the new specifications.

I would contend that any plan with such contortions is likely to conclude that a new building is a better option. What it will not determine is whether such needs were realistic to begin with.

In addition, a September 17 report by Arthur Andersen, which we have provided to the committee today, echoes our contention that the proposed move may not be the most cost-effective choice.

After due study, Arthur Andersen concluded that the Deva Report's key assumptions significantly understate the cost of a PTO relocation. Using prudent assumptions and accounting for some of the risks they noted results in a \$121 million reversal in the Diva result, from a \$72 million savings if PTO relocates to a cost increase of \$48 million if PTO relocates.

Overall, "the proposed PTO relocation project encompasses significant risk and would result in higher occupancy costs for the PTO."

Now, the Commerce and the Patent and Trademark Office have spent a great deal of taxpayer money on the Jefferson Solutions and Diva Report, so I'm sure they'll try to say that the errors in these reports are innocent mistakes that don't really affect the conclusions, but the Andersen report makes clear the errors are fundamental and cannot be relied upon by the Federal Government as justification for going forward with the lease and discarding other options.

No. 3, PTO's cost for relocating into the new headquarters could run more than \$130 million. I know much political hay has been made over one consolidation scenario that could purchase these \$250 shower curtains and \$1,000 coat racks. I'm also aware that PTO recently told ABC News these plans were absurd and that they're not going to do that. Such assurances are comforting, but taxpayers can be forgiven for remembering previously proposed projects that were supposedly cost controlled.

Pennsylvania's Delaware Water Gap National Recreation Area, for example, recently came under scrutiny for an outhouse that sported a \$78-per-gallon paint job, a foundation with 29-inch-thick walls, and a slate gabled roof. Government auditors, who repeat-

edly denounced our cost estimate for the project as too high, later discovered that it was twice as high as we had estimated.

No. 4, just 6 months ago the Commerce Department's Inspector General issued a comprehensive report concluding that PTO's build-out process needlessly exposes the Government to increased cost risk. But what is most ironic is that the IG report contains only one major positive finding in page after page of problems: that PTO's planned procurement should continue because it is cheaper. The basis of that finding? It's the faulty data in the Jefferson Solutions report. In light of the new Andersen report, even this lone finding is now in doubt.

Finally, a survey taken by the Patent Office Professional Association found that, by a three-to-one margin, its members opposed the move. When workers of the single-largest PTO union, many of PTO's customers, and local residents around the proposed sites are saying, "Stop the music," maybe we should listen more closely.

Regrettably, representatives from the groups I just mentioned were not able to testify at today's hearing. I, therefore, ask that their prepared statements that have been given to me be read into the hearing record.

In conclusion, I would like to point out that media critics are already beginning to dub some Federal construction policies the "edifice complex." But, unlike Nero's Oedipus complex, Washington's edifice complex can be cured without costly therapy. All it takes is a little dose of common sense.

Senator CHAFEE. Thank you very much, Mr. Sepp.

Mr. Williams, research director, Citizens Against Government Waste.

**STATEMENT OF DAVID WILLIAMS, RESEARCH DIRECTOR,  
CITIZENS AGAINST GOVERNMENT WASTE, WASHINGTON, D.C.**

Mr. WILLIAMS. Good afternoon, Mr. Chairman. Thank you for this opportunity to testify today.

I represent the 600,000 members of Citizens Against Government Waste. One of our most famous publications is the "Pig Book," which I think a lot of people are familiar with.

CAGW is very pleased that this hearing is being held. First and foremost, now more than ever, taxpayers are demanding accountability from their Government. Too often in the past multi-billion-dollar construction projects have been undertaken without sufficient oversight and scrutiny, leading to the waste of tens of billions of dollars.

Second, we are at a point in the discussions about PTO that a difference can be made. Since GSA has executed lease agreements that would extend the current lease until 2014, there is sufficient time to make a reasoned decision which could save taxpayers a great deal of money.

Any time the Federal Government undertakes a major construction project or renovation project, CAGW immediately becomes concerned because past projects show a pattern of abuse.

For example, the Boston Courthouse—this \$218 million monstrosity is a quintessential symbol of excess. When complete, this courthouse will contain a six-story atrium, 63 private bathrooms, 37 libraries, and 33 private kitchens. In addition, the courthouse

will contain more than \$750,000 of art work, and a \$1.5 million dock.

Who asked for all these amenities? The judges. Well, of course, they're not the ones who are going to have to pay for it.

The Federal Government spent \$13 million for the services of world-renowned architect I.M. Paye to create this monument to Government waste. Believe it or not, Paye commissioned an \$80,000 model of this courthouse made out of imported African wood.

Case No. 2, the Foley Square Courthouse in New York cost taxpayers \$300 million, or more than \$400 per square foot. The General Services Administration's Inspector General testified that Foley Square incurred more than \$120 million in change orders, including adding carpeting valued at \$114 per square yard.

A little reminder, GSA-scheduled carpeting is only \$20 per square yard.

Doors and hardware which were originally estimated at \$1,300 per set increased to \$9,000 per door set because special woods and hardware were used.

The latest example of excess, the proposed relocation of the PTO complex, has become a pitched battle on and off Capitol Hill.

A report by Deva and Associates and Jefferson Solutions estimated that relocation would actually save money. A followup report by the accounting firm of Arthur Andersen shows just the opposite. Diva and Associates' comparison between an unconsolidated scenario and a consolidated one shows a cost savings of \$72 million.

CAGW doubts the accuracy of this figure because a number of items slated for the new location, such as pantries and a child care facility, are soon to be added to the current space if they don't move. These little extras add up to \$17 million.

Another reason to question Diva and Associates is because of their gross under-estimation in moving cost—\$5 million—even though Congress passed a cap of \$135 million in such costs.

Diva and Associates estimates total furniture cost of \$65 million, and everyone has been talking about the furniture and the different amenities. Well, they talk about worst-case scenarios. This is an Armageddon scenario when we talk about a \$250 shower curtain. This is way beyond worst case.

A September, 1998, Arthur Andersen report rebuts the Jefferson Solutions report on per square foot cost. In particular, the Arthur Andersen audit states—and this is a direct quote—"There is an error in the Jefferson Solutions report. The report compares an estimate of the current blended lease rate of \$27.89 per occupiable square foot to the proposed lease rate of \$25.41 per square foot."

Our analysis reveals that the \$25 figure—it is on a rentable square foot basis. Rentable square footage is always greater square space than occupiable, thus bringing down their per square footage cost.

According to Arthur Andersen, "Thus, Jefferson Solutions' conclusion that the proposed relocation would result in lower direct lease cost to PTO is incorrect."

Based on the data presented in the report, a PTO relocation from its existing space to a consolidated facility would, in fact, result in



higher direct lease cost. This is your classic apples and oranges comparison game.

In addition, Department of Commerce's Inspector General is concerned about the construction because of inadequate space planning and the risk of an expensive build-out.

An analysis of the cost associated with construction of the new PTO office space reveals that total construction and mortgage cost for the 20-year lease are estimated at \$1.6 billion. This is twice the cost of the Ronald Reagan Building.

After 20 years, the Federal Government won't even own the building. What will taxpayers have to show for a \$1.6 billion building? Absolutely nothing.

The most popular counter-argument advanced by proponents of PTO relocation is that no tax dollars will be used for this cons. Well, instead of requiring the American taxpayer to shell out the money, large and small inventors will be made to pay more in fees to construct the new complex.

Senator CHAFEE. Mr. Williams, you're going to have to wind up here.

Mr. WILLIAMS. OK.

CAGW recommends that legislation to privatize PTO has passed the House and awaits action by the Senate, so let's take a step back. Let's not put the cart before the horse.

Second, the Arthur Andersen report calls into question the entire basis and rationale for moving to a new relocation, and this deserves greater scrutiny.

This concludes my testimony, and I'll be glad to answer any questions you may have.

Senator CHAFEE. Thank you, Mr. Williams.

Let me just say this about the move. Obviously, we have a duty to look at expense factors. But running any organization that's scattered in 18 buildings seems to me to be a formula for disaster. So I believe consolidation make sense. The expenses are important, and they should be reviewed, but having people scattered in 18 locations for one organization seems to me not a good way to do business.

Now, both you and Mr. Sepp mentioned the Arthur Andersen study. We'd like to get copies of that. Can you provide us with copies of that, Mr. Sepp?

Mr. SEPP. Yes.

Senator CHAFEE. Who's got the copies?

Mr. SEPP. We both do.

Senator CHAFEE. OK. I'll choose you, Mr. Sepp, if you could be responsible for seeing—

Mr. SEPP. Sure.

Senator CHAFEE. When could we get those? Today?

Mr. SEPP. Yes.

Senator CHAFEE. All right. I would appreciate that.

Next, I'd just like to put one thing to rest, if I might.

To show you how we can stay on the high level, let's concentrate on the \$250 shower curtain. It is my understanding that there is a list of amenities or furnishings that GSA provides for an organization, and if the organization wants to spend all of it on shower

curtains at \$250, that's fine. The only thing is, there wouldn't be any money for chairs in the rooms. That's the way I understand it.

I don't think we ought to keep beating up on \$250 shower curtains, because it all comes out of one pot. Each of us as Senators are given X dollars to run our offices. Presumably we could spend an exorbitant amount on sofas, but, if so, we wouldn't have any money left for paper or stamps or whatever it might be.

If you want to argue against that, Mr. Williams, you go ahead.

Mr. WILLIAMS. Well, with all due respect, Senator, the Foley Square Courthouse in New York, as I mentioned, had \$120 million in change orders, and \$60 million of those dollars were not accountable in a competitively bid process. So——

Senator CHAFEE. That's a different subject from these furnishings for the project, though.

Mr. WILLIAMS. There are opportunities to spend more money when it comes to the build-out and other costs.

Senator CHAFEE. Well, I think your points about the Foley Square Courthouse—obviously, that must have been done before I was chairman of this committee.

[Laughter.]

Senator CHAFEE. But I don't dare look.

Senator Warner, what would you like to do? Why don't you take over. It's your subcommittee.

I want to thank everybody for testifying. There's one more panel to come.

Senator WARNER [ASSUMING THE CHAIR]. Thank you, Mr. Chairman. I apologize for my absence. We had a death in the family, and I was privileged to give the eulogy. And then, once on the plane, the plane malfunctioned and returned to the airport. Everybody has been through these experiences. But anyway, I'm here.

What I'd like to do, with the concurrence of my good friend and colleague, is to bring panel one back and propound a series of questions which I hope can begin to right this listing ship a little bit, so if Mr. Peck and Mr. Lehman will return, I thank them.

Now, Mr. Peck, in 1995 you, along with the existing landlord, testified before this committee in support of the committee-passed resolution. What, in your opinion, has changed since that time?

Mr. PECK. Just to correct the record, it wasn't me in 1995, but it was my predecessor. GSA did testify in favor.

Nothing has happened since that time to change our basic conclusion about the advisability of going ahead with this project in this manner.

Senator WARNER. All right. And I note the following. The committee transcript, in which the Charles E. Smith Companies testified, says, "We should note that the Smith Company has been pleased in the manner in which this solicitation has been managed by both PTO and GSA." That was said by their Group Senior Vice President for the Charles E. Smith Companies, accompanied by Mr. Cogood and one of the CEOs.

The second one, Mr. Peck. The Patent and Trademark consolidation has received criticism for providing day care centers, fitness centers, and cafeteria space. Are these types of facilities included in other ongoing Government procurements?

Mr. PECK. Yes, sir. I can report to you that GSA operates—or at least houses in our buildings across the country—109 day care centers. I don't know the numbers on cafeterias or fitness centers, but I can tell you that they are, in large buildings, more the rule than the exception.

Senator WARNER. Mr. Lehman, what assurances are you prepared to give this committee and the Congress that you are prepared to control the costs on this project?

Mr. LEHMAN. Mr. Chairman, the budget process will provide a careful check on our spending. Any requests for funds will be reviewed by me, by the Secretary of Commerce, by the Office of Management and Budget, and by the Congress, of course.

Second, the memorandum of understanding between the General Services Administration and the PTO incorporates a number of cost control measures.

Also—and I referred to this earlier, in my earlier testimony—the Inhofe-Brownback amendment to the appropriations bill, and we support that amendment, places caps on build-out and moving costs comparable to the amounts to be spent to build-out and move other Federal agencies. We welcome that amendment, and we have never intended, never intended at all, Mr. Chairman, to spend more than our counterparts in other agencies. Hopefully, if anything, we'll come out with a little less.

Senator WARNER. Thank you.

Have either you or Mr. Lehman or anyone in your respective organizations seen the Arthur Andersen report?

Mr. PECK. Senator Warner, I just saw it for the first time about 10 minutes ago, but I have not really had a chance to review it.

Mr. LEHMAN. No, sir, I haven't seen it.

Senator WARNER. Now we'll resume the questions to panel 2, and I'll defer to my colleagues, if you wish to initiate a question or two, and then I'll followup.

Senator SESSIONS. Let me ask the panelists, it seems to me—you know, we've been accused of "living in spin" in this town, and everybody spins things a little; if they're for something, they put the best look to it. But it seems to me—and I'll ask you if you agree with this—that there has been a stated commitment to not increase the rent, but the rent is just for a shell building, and there have been extraordinary additional expenditures on top of that. You've got the \$88 million, plus another \$29 million, for interior. And if you figure that, you've exceeded the GSA standard of \$36 per square foot to \$58 per square foot. I'm not sure they disagreed with me, but I wasn't sure.

Am I wrong about that? Would any of you like to comment on it? Mr. Kirk?

Mr. KIRK. Thank you, Senator, I would.

The understanding that we have is that this cold, dark shell that this SFO is calling for is going to be built out with this \$88 million. But this \$88 million must come from the successful bidder. He must pay for that out of the funds that he receives through the rent. So whether the building is completed and he pays a given amount of rent, or whether the building is not quite completed and he pays a given amount of rent and provides the \$88 million, the rent won't change.

As far as the above standard, AIPLA believe—at least our association believes—that this is something that the Patent and Trademark Office employees are entitled to. We do not wish to treat them as second class citizens. We want to give them the sort of—

Senator SESSIONS. You want to give them a high standard. The standard is \$36, and you are prepared to go to \$58, so the IG has now made a decision on how palatial their offices should be.

Mr. KIRK. Well, as I said, we don't agree with your figure of \$58, but we believe that these people should be entitled to the same kind of facilities that the private sector has so that we can get the best qualified patent and trademark examiners and retain them in the Office. It is important—

Senator SESSIONS. Are they entitled to better standards of office space than any other Government employee?

Mr. KIRK. I do not believe that they will have better quality office space than any other Government employee with this prospectus, sir.

Senator SESSIONS. And I believe the Inspector General's Office did conclude that the expenditure of an additional \$29 million would violate Federal law, without approval, and no approval has been obtained.

Mr. KIRK. I would defer to the Inspector General to comment on that, sir. That was not my understanding, though.

Senator SESSIONS. Let me ask Mr. Williams or Mr. Sepp if they want to comment on any of that.

Mr. WILLIAMS. Well, in particular, Citizens Against Government Waste is concerned about the domino effect of this building. We are talking now about a new U.N. building; that's probably going to cost \$500 per square foot. We need to put an end to this. The courthouses were bad enough; Boston was bad enough; Foley Square was bad enough; the Ronald Reagan Building was bad enough. We need to put a stop to the extravagance that the Federal Government is paying for. There is no surplus in Washington, and you have to be more careful with the way you spend tax dollars or the user fees that inventors pay.

Mr. SEPP. Senator, I also refer you to some testimony by Kenneth Addison. He was not a witness for the committee today, but he asked that his testimony be read into the record.

He said in his testimony, "While we have been told of the overwhelming requirement for additional space, some 200,000 square feet of currently leased space remain unoccupied. As for the new building"—and I'm paraphrasing—"the need for and justification of amphitheaters cannot be credibly established, and would seem to represent a poor investment. Conversely, meeting rooms and auditoriums capable of accommodating several thousand people are readily commercially available across the street."

Now, obviously there is some doubt as to whether or not all of these build-outs are necessary, and this is coming straight from some of the users of the Patent Office.

Senator SESSIONS. Well, I understand that. We all have to do sometimes with less than we would like. My wife had me look at my son's old car's tires the other day. She wanted him to get a new set, and I said, "I think you can get another quarter out of them

before we buy a new set." Now maybe if he has a wreck, I'll be in trouble.

But you have to make decisions. We all do, and having things as perfect as we would like is not possible.

But give it to me precisely, Mr. Kirk: the \$29 million extra is extra costs?

Mr. KIRK. Yes, sir.

Senator SESSIONS. And that would amount—if you added the \$88 million and the \$29 million together—it would amount to \$58 per square foot build-out, which would exceed GSA standard build-out costs for a shell building?

Mr. KIRK. Senator, you can look at it from that perspective—Senator SESSIONS. I mean, isn't what I said correct?

Mr. KIRK. Well, approached from that direction, that is correct. But you could also say, Senator, that if you didn't have the build-out and you had the warm, finished shell so that you don't need the \$88 million to finish the build-out, then you'd be back to the basic \$29 million. And as far as we are concerned, we believe that this is something that is desirable.

Let me just say that I am somewhat troubled because it seems to me that we are up here condemning the construction of the Foley Square Courthouse, the Boston Courthouse, and some out-house built by the Park Service. We're not talking about that. Nobody is supporting that. Nobody is supporting a \$500 per square foot building.

I looked up the cost of the Pentagon. The Pentagon is 3.7 million square feet, built for less than \$90 million. We could say, well, everything is outrageous compared to that—

Senator SESSIONS. The year was 1939–1940.

Mr. KIRK. That's correct.

So I think we need to put this into perspective, and we believe that this is a reasonable basis. But the bottom line for our association, sir, is competition. Competition. Let us have competition and let the best competitor get the bid.

Senator SESSIONS. Well, I am just trying to get at the right facts and what the figures are, and it seems to me that we do have higher figures than are being represented. GSA figures are one thing, but for the taxpayers and for the Government, it's GSA figures plus the extra money, and that's where we have to evaluate whether or not we've got a good cost.

And then, in addition to that, I think we could ask ourselves, what about the Ronald Reagan Building, three blocks from the White House? It came in, apparently, for less than this structure would cost, certainly, over the life—about half of what this structure would cost over the life of the lease.

Have you figured that out, Mr. Sepp or Mr. Williams? Do you have any numbers on that, what the total lease costs would be?

Mr. PECK. Yes, sir. I can tell you that the Ronald Reagan Building is financed through the Federal Financing Bank, so it enjoys a much more favorable interest rate than could any private developer, and we're going to take PTO through a private development process. But we pay the Federal Financing Bank \$65 million per year for the Ronald Reagan Building over the course of 27 years.

Senator SESSIONS. What does that mean?

Mr. PECK. Well, it's costing us more for the Ronald Reagan Building, if that's the answer. And it's probably about the same amount of usable square footage.

Senator SESSIONS. The numbers look almost exactly alike.

So it would cost you more. And what would be your annual payment on this building?

Mr. PECK. Our annual payment on this building is—today it is approximately \$57 million, but escalated to 2002, it will be about \$64 million. But again, the comparison with the Ronald Reagan Building today would be \$57 million.

Senator if I might, on this question—

Senator WARNER. On the question of comparisons, if you would yield for a moment—

Senator SESSIONS. Yes, sir, I sure would.

Senator WARNER.—what if the PTO stays where they are? What is going to be the cost to the taxpayer?

Mr. PECK. Well, the point is that per square foot, we are paying the same amount for PTO in the existing location per rentable square foot as we will in the other location. And the point that I keep trying to make is that that rentable square foot dollar includes the cost of the \$88 million fit-out. That's the way the private sector real estate market works. It's included in that cost. The only thing that is above that is the \$29 million.

What I want to emphasize is that in the private sector, in the real estate market, we are operating in the Government like the private sector does. This is good news, and it is common—it is usual—in the private sector that the landlord gives what is called a “standard fit-out,” which most of us who have ever leased from private landlords consider less than adequate, but nonetheless they call it standard, and then you pay for what is called “above standard.” Maybe the terminology is unfortunate, but nonetheless, it is quite common for people to pay “above standard” to get what they believe is the minimally adequate build-out for their purposes.

Senator WARNER. Well, my only point to you, Mr. Peck, is that when you represent that the cost of the fit-out is \$36, and not count the \$29 million extra, you're not accurately representing the cost of this building. When you add both together it comes out at \$58, and that exceeds the GSA standard.

Let me ask you this, though. With regard to the Ronald Reagan Building, which was supposed to last 200 years and be owned by the Government, the cost per year is the same, virtually, as this building will be, and after 20 years we will not have anything.

Mr. PECK. As Commissioner Lehman noted, we may have an option to purchase the building at some point, but the Government made a decision to build this as a leased structure some time ago.

Senator WARNER. I may have been here, but I've been denying responsibility for a lot of decisions since I haven't had 2 years here yet.

[Laughter.]

Senator WARNER. I understand. There was a lot of decision-making went into that. But as Senator Smith said, maybe we ought to think about that and learn from this process. If we can buy a building for the same cost that it takes to rent one, then maybe we need to rethink how we do business.

Mr. Chairman, thank you for your leadership on all these issues. I've got to get back on the bridge of this ship and get it going again. I'm in favor of this project, and I'll get it going here in a moment.

But let me bring to your attention the following. In the testimony, Mr. Peck, I quote, "If the project is delayed, extending existing leases with fundamental building improvements to match market comparables will cost an additional \$6.4 million annually, \$32 million over the typical 5-year lease extension."

So there are some savings to the taxpayers associated with this move, in your judgment?

Mr. PECK. Yes, sir. As we noted, it would cost the landlord money, which would be passed on to us, to bring these buildings up to the same standard.

Senator WARNER. Sure.

I want to first ask Mr. Kirk, you are one of the usual organizations that you represent. Is there any truth to the rumor that the inventor community somehow is not in favor of this project?

Mr. KIRK. Clearly there are certain inventors that have expressed opposition to this, Senator Warner, but the members of AIPLA who represent private and corporate inventors before the Patent and Trademark Office have not seen that. We believe that, given the information that the cost to the Patent and Trademark Office, which is passed along in user fees, is going to be less under this new procurement than the office would otherwise be paying today. When this information is placed before any person—be it an inventor or a person in the street—"Would you rather pay less than more?" And they say, "Less."

So we believe that with information, there will be a lot of support for this going forward.

Senator WARNER. All right. Thank you very much.

This record will remain open. If some of those groups want to submit testimony, I invite them. The purpose of this hearing is to bring as much daylight as I can possibly shed on this project. That's the sole reason for doing it, because this project is going forward as of now. There is no further action required, but I felt obligated, since one of my colleagues had gone to the Floor and brought to the attention of the Senate a very distressing set of facts, and I gave him the opportunity—he's otherwise engaged, Senator McCain; he may yet come—but the point is to bring daylight and to invite all to submit their views on this project. So I'm inviting that.

Now, Mr. Sepp, I've had a long relationship with your organization. Have you checked the archives?

Mr. SEPP. Oh, yes. You've won our "Taxpayer Friend" award a number of times.

Senator WARNER. So I try to do the best I can.

[Laughter.]

Mr. SEPP. We appreciate it.

Senator WARNER. I had to drag that out of you, but you're getting there.

You know, it's interesting. We cannot be unmindful of what's going on in our city today. And there's an accusation that's going around that's called "fairness." My question to you, have you

availed yourself of an opportunity to sit down and talk to either the PTO or the GSA allow them to speak to some of the very dramatic points that you've raised here today, and elsewhere?

Mr. SEPP. Well, as I am not responsible for the Government Relations portion of our campaign, I personally have not met with any representatives of GSA or PTO. However, I believe there is an ongoing dialog between my colleague, Al Cors, our Vice President for Government Affairs, and GSA and PTO. I would be happy to furnish you with additional information on that once I get into contact with Mr. Cors.

Senator WARNER. Well, it's interesting. We invited Mr. Cors to testify today and he declined. You're aware of that?

Mr. SEPP. Yes.

Senator WARNER. So the most you can say is that you believe, you just have no—

Mr. SEPP. Well, part of the problem is, of course, that we were contacted about this hearing with, unfortunately, very short notice, and Mr. Cors had a previous engagement—

Senator WARNER. I accept that.

Mr. SEPP.—that he simply could not break out of. But to my knowledge, there is an ongoing dialog—

Senator WARNER. Well, would you provide for the record his response to this question at your earliest opportunity?

Mr. SEPP. Yes. Certainly.

[Information to be supplied follows:]

RESPONSE OF AL CORS, JR., VICE PRESIDENT FOR GOVERNMENT AFFAIRS NATIONAL TAXPAYERS UNION

As Vice President for Government Affairs at National Taxpayers Union, I have made a substantial effort to seek out information from the U.S. Patent and Trademark Office (PTO) regarding their proposed relocation.

Mr. Sepp is correct that I have been engaged in a written dialog with PTO. Upon receiving a request from PTO for a face-to-face meeting, I suggested that such a meeting might be more productive if I were to provide a written framework of concerns and questions beforehand. On August 14, I submitted a six-page letter to Mr. Q. Todd Dickinson, Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks, containing detailed and specific questions ranging from the lease proposal's usage of "occupiable" and "rentable" square feet, to the methodology of the Deva and Associates report.

Despite having contacted Mr. Dickinson on August 27 regarding the status of my letter, I did not receive a reply until September 16. Mr. Dickinson's 2¼ page letter, dated September 11, ignored most of my specific questions. In fact, much of the language in the letter reads as if it were taken from stock paragraphs in PTO's promotional literature on behalf of the lease proposal.

My letter to Mr. Dickinson concluded that "Your answers to the preceding questions will help us to prepare for the meeting you have proposed." PTO's anemic response indicates to me that the Government's motives for seeking a face-to-face meeting are grounded not in the desire to have a mutually beneficial dialog, but rather to script a public relations event. Nonetheless, I remain ready and willing to meet with any PTO or other Government officials, should more complete answers to my questions be forthcoming.

In response to your request for full disclosure, I ask that my attached letter to Q. Todd Dickinson, as well as Mr. Dickinson's reply, be read into the hearing record.

ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS,  
PATENT AND TRADEMARK OFFICE,  
U.S. DEPARTMENT OF COMMERCE,  
*Washington, DC 20231, September 11, 1998.*

Mr. AL CORS, JR.,



*Vice President for Government Affairs,  
National Taxpayers Union,  
108 North Alfred Street,  
Alexandria, VA 22314.*

DEAR MR. CORS: This is in response to issues raised in your August 14 letter regarding the Patent and Trademark Office's (PTO) proposed long-term lease of space. While no taxpayer dollars are involved in this project, we recognize the Union's long history as a guardian of the public's pocketbook, and assure you that we are equally committed to the cost-conscious management of our customers' fees.

The PTO presently occupies space in 17 buildings in Crystal City, with varying lease terms. The majority of our space is occupied under leases that expire or are cancelable between 2001 and 2004. With these dates fast approaching, we believe it makes good business sense for the PTO to proceed with a competitive procurement to obtain space for our operations in the future. Our need for space exists whether or not legislation is passed that changes the structure of the PTO.

Given the Union's commitment to cost-conscious government management, we hope that you would support our goal—using competitive procedures to select a developer for a facility that offers the greatest value to the Government at the best lease rate. While some would prefer that we limit our space negotiations to a single source, our great American system of open and free business competition has historically produced proven benefits in value and cost savings. We believe the PTO's open competitive procurement will allow us to leverage those benefits to the advantage of our customers and the American people. This plan for procuring space is predicated on our commitment to wise and efficient use of our customers' fees.

As you may know, a number of studies have been commissioned to review this procurement. All of them have found that the procurement has proceeded in a completely open and fair manner and that proceeding in this fashion would be the most cost-effective solution to our long-term need for space.

For example, the Business Case Analysis developed for the PTO by Deva and Associates, P.C. concluded that "... PTO should proceed with the competitive procurement of a consolidated lease because the agency will incur, over the 20-year lease period, \$72,395,278 less in costs in the consolidated scenario than in the unconsolidated scenario."

A review by Jefferson Solutions also found that PTO should continue our consolidation effort. In their report of May 15, 1998, they concluded that our methodology is sound, and should produce an economic benefit for the agency. They note, for example, that our present average rental rate is well above the market price for comparable space.

Our approach has also been verified in an independent review by the Office of the Inspector General of the Department of Commerce. The IG also found that our strategy is reasonable, and that our approach should result in long-term cost savings. In its report, the IG confirmed the analysis that our current leased space is more expensive than the target amount that has been authorized by Congress.

With regard to your question concerning waiting until the adjournment of the 105th Congress, it is our understanding that its planned adjournment is sometime in early October. If the project proceeds, GSA will not award the lease consolidation contract until sometime after that date.

With regard to furniture and other items which you have addressed, the dollar figures associated with those items were developed in response to the broader question of the maximum that the entire project might cost and whether there would still be an overall cost savings. Even in such a "worst case scenario", we would still realize a minimum savings of \$72,000,000 for our customers over our current lease over the lease term.

However, as I discussed personally with you and wish to reiterate, the PTO is not going to purchase "\$250 shower curtains, \$870 waste receptacles, \$750 cribs, \$309 ash cans or \$1000 coat racks."

Your questions also indicate a concern with certain physical features of the SFO. Our analysis is that such facilities are cost-effective and have become standard in both private and public sector business development. Such facilities are commonly included in newly consolidated Federal facilities and are often added to existing buildings. Especially in the current economy, we face a challenge in recruiting and retaining the employees that we need to serve our customer base. These amenities not only promote employees' physical and mental fitness; they become part of a package that allows the PTO to attract and retain the best.

You question some of the costs associated with specific features for public areas. The SFO requires that lobbies "shall employ high-quality materials which are durable and easily maintained", which is good building practice in heavily trafficked public areas. The materials listed are similar to finishes in many of the PTO's existing

buildings. In addition, the SFO does not require trails, fountains, sculptures, or amphitheatres; such features are merely listed in the SFO as examples of superior site design elements in an overall landscape plan and can, incidentally, be found at PTO's existing Crystal City location. The developer can choose to include them or not, at its own discretion.

As I have indicated to you, I feel that many of the concerns raised by your questions can be best addressed through an open discussion, and wish to reiterate our invitation to meet with us. The PTO believes strongly that we have developed a reasonable and cost-effective approach to solving our long-term space needs, an approach that is mindful of our responsibility to those who pay the fees that support our organization—our customers.

Sincerely,

Q. TODD DICKINSON,  
*Deputy Assistant Secretary of Commerce  
and Deputy Commissioner of Patents and Trademarks.*

NATIONAL TAXPAYERS UNION,  
*Alexandria, VA, August 14, 1998.*

MR. Q. TODD DICKINSON,  
*Deputy Assistant Secretary of Commerce  
and Deputy Commissioner of Patents and Trademarks,  
U.S. Department of Commerce,  
Patent and Trademark Office,  
Washington, DC 20231.*

DEAR MR. DICKINSON: Thank you for your recent letter and for your offer to answer more detailed questions regarding the Patent and Trademark Office (PTO) procurement of new facilities. In the interests of continuing our dialog, I have enclosed a series of questions related to our concerns. Your candor and specificity would be appreciated. Regarding:

*Reorganization*

PTO may be entirely reorganized if the PTO privatization legislation currently pending before Congress becomes law. If the legislation passes, how will it impact your staffing levels and space needs?

Will PTO need more or less space? How much?

Please provide a detailed list of your staffing and space assumptions if the legislation passes.

It would be implausible to imagine that passage of the legislation would have no impact on space. Why haven't you submitted two space plans to GSA, one if the legislation passes, and one if it does not?

Why would it not be more prudent to wait until the conclusion of the 105th Congress, to see if Congress has either passed the legislation or not, and then submit a revised plan of space needs to GSA? Couldn't PTO simply remain in their current buildings for the period of this brief delay?

*IG Report*

The Inspector General of the Department of Commerce issued a report on the PTO headquarters consolidation that listed 11 specific recommendations. Please answer the following questions in response to each specific recommendation (i.e., 11 separate answers to these questions):

A) Do you agree with the recommendation? If you disagree, please state your reasons.

B) Do you intend to implement the recommendation?

C) What is the status of implementing the recommendation?

D) If the recommendation has not been implemented, since it has now been 5 months since the IG Report was submitted, in detailed fashion, why have you not implemented the recommendation?

E) If the recommendation is not implemented, when do you anticipate that it will be implemented?

*Extravagant space items*

Why does the SFO list outdoor amphitheatres? Did you ask GSA to include this item? What is the justification for it? Is this a wish or a genuine need; in other words, could you accept space without it?

Why does the SFO list jogging trails? Did you ask GSA to include this item? What is the justification for it? Is this a wish or a genuine need; in other words, could you accept space without it?

Why does the SFO list fountains? Did you ask GSA to include this item? What is the justification for it? Is this a wish or a genuine need; in other words, could you accept space without it?

Why does the SFO list sculptures? Did you ask GSA to include this item? What is the justification for it? Is this a wish or a genuine need; in other words, could you accept space without it?

#### *Furniture and Deva Report*

Did the purchase prices for the furniture listed in the Deva Report come from the standard GSA office supply schedule? If not, how were the prices calculated? What assumptions were used? Please provide written back-up material detailing the specifications for each item listed in the report.

We understand that PTO now takes the position that it may not necessarily intend to spend all the money on all the furniture items listed in the Deva Report. Is that true? If so, why did PTO send that report to Congress without that qualification?

If the report was submitted to Congress without the qualification, what does that imply about PTO's commitment to cost control?

We understand that PTO views the costs for the furniture items listed as "worst case scenario" figures. Is this true? If so, how were these "worst case" figures determined? Were they based on actual costs from some type of catalogue, supply schedule or other source? If so, please provide copies of the support materials detailing the costs.

If the furniture section of the Deva Report lists costs that you do not necessarily intend to follow, does that mean that there are other sections of the report that PTO does not necessarily intend to follow?

If so, what are these sections and why does PTO not intend to follow them?

If not, what language in the report indicates to the reader that PTO does not necessarily intend to follow the cost figures listed for furniture, and what language indicates that the other sections of the report are valid and accurate, will be followed, and should be taken at face value?

If PTO's position is that they are not necessarily bound by the costs in the furniture section of the Deva Report, does that not call into question the validity of the entire Deva Report?

PTO has stated on a number of occasions that it feels it is less expensive to move to a location rather than to stay in its current location. PTO commissioned the Deva Report to justify that decision. Yet PTO has an office of space planning to perform this very type of analysis. Why did PTO need to retain an outside consultant to perform the same work?

Specifically what are the areas of inadequacy within PTO's office of space planning that needed to be supplemented by outside counsel?

The Deva Report was originally supposed to cost \$235,000. Is this figure accurate? Why was such an expensive report commissioned?

The Deva Report eventually came in well over budget and well over deadline. We understand that the cost escalated almost 40 percent to \$327,000. Is this the final cost? What was the justification for the cost overrun?

We understand that the Deva Report was originally intended to take 4 months to complete. Is this accurate? We understand that PTO gave Deva and Associates six separate time extensions. Is this accurate? What was the justification for the delays?

When was the final report sent to PTO? How many months over the original deadline was the report sent to PTO?

Since the Deva Report was well over budget and well over deadline, what does that imply about the quality of work produced by Deva and Associates and about their own commitment to cost control, let alone evaluating the cost control of the PTO headquarters consolidation?

Deva and Associates wrote to PTO stating, "we do not express an opinion on whether the 'Business Case Analysis of Space and Facilities Management' is presented in conformity with the American Institute of Certified Public Accountants presentation guidelines or on whether the underlying assumptions provide a reasonable basis for the presentation. Had we performed additional procedures, other matters might have come to our attention and would have been reported to you." How could PTO spend \$327,000 for a report and not make sure that standard accounting rules were followed?

How could PTO spend \$327,000 for a report that did not have Deva and Associates provide their professional opinion on the adequacy or inadequacy of the assumptions that underlie the entire report and its ultimate conclusions?

Since Deva and Associates did not certify that standard accounting rules were followed and since they took PTO's assumptions at face value, without critical comment on their adequacy, don't these factors call into question the entire reliability and value of the report?

Please provide a list of each office in Congress to which PTO sent the report. Please provide the dates for transmittal of each report that was sent.

Please provide a list of each person who received the report outside of Congress. Please provide the dates for transmittal of each report that was sent.

Please provide a copy of the transmittal letter, and/or any other written or e-mail materials that were sent to Deva and Associates, starting with the first contact PTO made with Deva concerning this study, up to the present date.

Deva and Associates separated their work assignment into various subtasks. One of them was to "identify external sources for project inputs." Besides materials received from PTO and GSA, please provide a list of the people Deva and Associates interviewed outside of government to produce their report. Please also provide a list of the documents Deva and Associates reviewed from non-governmental sources.

Why does PTO need 175 projection screens? Couldn't PTO make do with a small number of mobile screens at each building, kept in a central storage location, and used as needed? If so, how many?

Why does PTO need 18 showers? Couldn't PTO make do with less? If so, how many?

Why does PTO need 19 beds? Couldn't PTO make do with less? If so, how many?

#### *Jefferson Solutions Report*

Please provide a copy of the transmittal letter, and/or any other written or e-mail materials that were sent to Jefferson Solutions, starting with the first contact the Department of Commerce made with Jefferson Solutions concerning this study, up to the present date.

How much did the report cost?

The Department has space planning professionals who perform the very type of analysis required under P.L. 105-174. Why did the Department need to retain an outside consultant to perform the same work?

Specifically what are the areas of adequacy within the Department's space planning professional staff that needed to be supplemented by outside counsel?

Please provide a list of each office in Congress to which the Department sent the report. Please provide the dates for transmittal of each report that was sent.

Please provide a list of each person who received the report outside of Congress. Please provide the dates for transmittal of each report that was sent.

Page A-7 of the report states, "PTO currently has 31 leases, averaging \$27.89 per occupiable square foot . . . The proposed lease as outlined in the Prospectus will reduce this cost to \$25.41 per square foot, expressed in 1998 dollars." This statement is the key evidence cited to justify the bottom line conclusion of the report—that it is more expensive to stay in the current location than to move. Interestingly, the first figure cited is expressed in terms of "occupiable square feet," while the second figure is expressed as simply "square feet." Is the \$25.41 figure cited occupiable square feet, rentable square feet, or some other type of measurement of square feet?

It appears that figure may be actually "rentable" square feet. If this is true, then Jefferson Solutions has used two entirely different standards to calculate costs and determine whether moving or staying is less expensive. This would, of course, make the comparison invalid. Here is why it appears that the \$25.41 figure is "rentable" square feet. \$24 per "rentable" square foot is the prospectus rent target. That figure was in 1996 dollars. 2.9 percent is the inflation escalator that has been used all along on this procurement. If the \$24 figure from 1996 is multiplied by the inflation escalator, it equals the exact same figure in the Jefferson Solutions Report—" \$25.41 per square foot, expressed in 1998 dollars." Is this indeed how Jefferson Solutions arrived at this figure?

If so, does that not mean that Jefferson Solutions has used two different standards ("rentable" vs. "occupiable" square feet) to compare the cost of moving vs. staying?

If so, does that not invalidate the conclusion of the report—that it is less expensive to move, than to stay?

If so, shouldn't the same standards be used to accurately compare the costs of moving vs. staying (i.e., either occupiable vs. occupiable or rentable vs. rentable)?

What is PTO's calculation of the cost of moving vs. staying, comparing occupiable square feet to occupiable square feet?

What is PTO's calculation of the cost of moving vs. staying comparing rentable square feet to rentable square feet?

*Above standard build-out*

Please provide a detailed breakdown of the \$29 million cited for above standard build-out, listing each item covered within this figure. Provide a detailed specification for each item.

Are above standard build-out costs in addition to the furniture and other move-in needs in the Deva Report?

Please provide a chart that shows the total build-out costs for the entire procurement, broken down for the categories of general office space, special use space, multi-use space, and other space, along with whatever subcategories apply to these general categories. In doing so, indicate the cost per occupiable square foot for: special use space, multi-use space, and other space; in other words for any space that does not fall within the category of general office space whose costs would be \$36.69 per occupiable square foot.

*Fitness Center, Day Care, and Cafeteria*

PTO has requested that its office space include a cafeteria. Is this a wish or a genuine need; in other words, could you accept space without a cafeteria if you had to? Do you have any data to show the lack of restaurants within the general vicinity of the three sites that are now up for bid?

PTO has requested that its office space include a fitness center. Is this a wish or a genuine need; in other words, could you accept space without a fitness center if you had to? Do you have any data to show the lack of private fitness centers within the general vicinity of the three sites that are now up for bid?

PTO has requested that its office space include a day care center. Is this a wish or a genuine need; in other words, could you accept space without a day care center if you had to? Do you have any data to show the lack of private day care centers within the general vicinity of the three sites that are now up for bid?

Instead of PTO operating a cafeteria, fitness center, and day care center, could the space plan simply provide for vacant commercial space, and then encourage private sector bids to open a privately run cafeteria, fitness center, and day care center?

Could you support that alternative?

If that alternative were chosen, wouldn't that save the costs of such items as interior build-out and furniture?

Your answers to the preceding questions will help us to prepare for the meeting you have proposed. We may have additional questions, but this should be a good start.

Thank you again for your cooperation. We look forward to your answers.

Sincerely,

AL CORS, JR., *Vice President for Government Affairs,  
National Taxpayers Union.*

Senator WARNER. Can either Mr. Peck or Mr. Lehman corroborate the fact that the organization which Mr. Sepp is representing today did or did not at any level in your organizations make contact for the purpose of exchanging facts?

Mr. LEHMAN. Mr. Chairman, we on several occasions attempted to contact the organization that you referred to, and in fact we have written a letter—two separate letters—requesting that they come and get a complete briefing on what we're doing. And we have yet to receive any response to that, other than "no." There have been some telephone conversations—

Senator WARNER. Did they give you a written response that said no?

Mr. LEHMAN. No, I don't believe we received any—we received some questions from them, but they declined to meet with us and receive a briefing on the matter.

Senator WARNER. Mr. Peck?

Mr. PECK. Mr. Chairman, our staff here, including a couple of people who are intimately involved with this project, tell me that they have not met with NTU, nor had a request to meet with them from NTU. But I can't speak for the entire organization, obviously.

Senator WARNER. You have a lot of very important factual information, Mr. Sepp, which you have included in your testimony, and indeed used in your public—and you have a perfectly legitimate right; I'm not contesting that. Are you at liberty to tell us the sources of those facts?

Mr. SEPP. Well, we have been contacted by a number of organizations due to our work on things like the Reagan Building, for example. We appeared in the press, speaking out on Federal public works projects. I know that—

Senator WARNER. We'll let you stick to this particular project. Are you at liberty to tell us from whence you got a lot of the information?

Mr. SEPP. Well, as a result of our public presence on this issue we've been contacted by groups, such as Patent Office Professional Organization. I know that Citizens Against Government Waste, as well, with its involvement in this issue, has certainly shared information.

Senator WARNER. I'm reading from an article in the Fairfax Journal, which is a very large newspaper in Northern Virginia, and it is Friday, September 18, 1998.

Mr. SEPP. Oh, yes. I'm aware of that.

Senator WARNER. And they make the following allegation: "The group"—referring to you—"a nonpartisan independent research group, working for lower taxes, admitted using materials supplied by Smith"—that's Charles E. Smith—"and the press releases issued by Smith, and the group's Vice President for Government Relations, Mr. Cors, met with the Patton-Boggs staffers to discuss the PTO."

Do you have any means to verify the accuracy of that statement?

Mr. SEPP. Oh, yes. We have received information from the Smith Company, along with many other organizations.

Senator WARNER. They have a perfect right to do that. Mr. Cors met with them, but I am somewhat taken aback that he did not take the initiative to meet with either of the sources of a different side of facts.

Mr. SEPP. Well, of course, as the gentleman pointed out, there is apparently some written dialog between Mr. Cors and the Government.

Senator WARNER. Well, that concludes my questioning of this panel—one other question here, to Mr. Sepp, please.

The Senate Environment and Public Works Committee conducted three individual hearings on the subject of the PTO. This committee has also placed an extremely low rent cap on what GSA can pay to lease space for the PTO in the committee's resolution.

Is it your opinion that the Government should not attempt, through competition, to obtain the best quality facility it can use for these rent dollars?

Mr. SEPP. I certainly believe that competition belongs in Government procurement policies, as well as a fair and level playing field. It is the position of my organization that the lease option needs further examination and ought to be compared with buying a building outright, locating at another site, or renovating existing facilities. We do not have a particular guiding preference, except that at this point, among the current alternatives, we think that ren-

ovating existing space would be preferable to leasing. That does not rule out other options.

Senator WARNER. I can understand that, and you have a perfect right to make that assumption. But do you think it has been a level playing field?

Mr. SEPP. At this point, no. As my testimony indicates, and I would invite you to review it——

Senator WARNER. I have looked it over, yes.

Mr. SEPP.—there is at least one differing opinion from an Arthur Andersen study that the lease option is not necessarily the most cost-effective one.

Senator WARNER. And we, the committee, now have in our possession as of today, together with the other two witnesses, the Arthur Andersen report.

Mr. Sepp, in your testimony you state that you are convinced that an upgrade of the PTO's current facilities is the most "responsible" approach for the taxpayer.

Is it your position, then, that the responsible action in this matter would be to negotiate a sole source lease with the PTO's existing landlord, without competition, to serve as a check on the fairness of the current landlord's offer?

Mr. SEPP. Not at all, Senator. As the second portion of my quote in the testimony indicates, we could also support additional options in other States, as well as the choice of building rather than leasing, should further study prove any of these courses to be more cost-effective.

Senator WARNER. All right. That concludes all my questions.

Senator do you have any followup?

Senator SESSIONS. With regard to the \$88 million build-out, Mr. Peck, is that figure a ceiling or not? Can it be exceeded?

Mr. PECK. It cannot be exceeded for the very reason that it is embedded in the rent, which we are going to pay to whoever wins this competition.

Senator SESSIONS. Could you agree to pay a higher rent if that figure went up?

Mr. PECK. Would we?

Senator SESSIONS. Is there anything in the contract that would allow you to avoid that?

Mr. PECK. No, sir.

Senator SESSIONS. With regard to the \$88 million, it is your testimony that there is a ceiling on that? That's all I was asking.

Mr. PECK. Yes, sir, there is a ceiling in our solicitation.

Senator SESSIONS. A ceiling in what?

Mr. PECK. In our solicitation, yes, sir.

Senator SESSIONS. Are those the kind of ceilings that can be raised by mutual agreement of the parties?

Mr. PECK. No, sir, because we are bound by the action of this committee and the House committee on a maximum rent that we can pay to the offerors.

Senator SESSIONS. Well, we have this habit, you know, of building buildings; Ronald Reagan started it at \$382 million and ended up at \$800 million. Are you prepared to tell us that you will not come back and ask for a higher rent because of unexpected costs?

Mr. PECK. Senator, I would never say never, but it is important to point out that the Ronald Reagan Building was built under a completely different kind of financing scheme, as were some of the other projects noted by some of the members of the panel.

Senator SESSIONS. Well, I guess the truth is, then, that there is no legal prohibition that would prohibit—that would guarantee the taxpayers today that they wouldn't be faced with a negotiated increase in some of these costs?

Mr. PECK. Well, Senator, let me be clear. Assuming we issue the go-ahead on this, we award the lease, it will only be awarded at the maximum amount allowed us by the prospectus. In other words, I am telling you right now that when we complete this procurement process, we will award within the limit that Congress made, which is to say to you, I am not coming back here to ask you for more money on this lease.

Senator SESSIONS. And with regard to the \$29 million, that's a matter that would be handled by the Patent Office, and not your business?

Mr. PECK. Yes, sir, but under the oversight of their Appropriations Subcommittee and Committee, obviously.

Senator SESSIONS. Well, there has been oversight on all these buildings where we've had cost overruns. I mean, the idea that there is a firm ceiling in law is not fully accurate, I would say.

Thank you, Mr. Chairman.

Senator WARNER. I'm going to get around to reading my opening statement after all panels have testified. But on page 2, Senator, I say the following, "The approval resolution," which I authored, "establishes a rental cap of \$24 per square foot. In 1998 dollars, that is \$25.41 for a rental square foot, which is less than the current lease rate for PTO's existing leases. These leases average \$26 per rentable square foot."

Is that an accurate statement, Mr. Peck?

Mr. PECK. Yes, sir.

Senator WARNER. Mr. Peck, the structured bidding for this put a 10-mile radius around your existing location, is that correct?

Mr. PECK. Yes, sir—well, it's not 10 miles. It's—if we move more than 10 miles, we have to pay relocation costs.

Senator WARNER. And I want to get those relocation costs out. Can you give us an estimate, if this thing breaks down and we have to go beyond the 10 miles—to another State, for instance, to Maryland, the District, whatever—does anybody have an estimate of those costs?

Mr. PECK. It can be a very substantial amount. It depends on where the employees live. It's about \$35,000 to \$40,000 per employee, the estimate of what it would cost to pay for the relocation.

Senator WARNER. Let's provide the committee with your best estimate as to the associated costs connected with that very important right which Government employees have, to be compensated under that moving 10 miles. All right?

Mr. PECK. Yes, sir, we will.

Senator WARNER. And they are significant.

All right, that concludes our questions of this panel. I thank each of you very much. I again apologize for my earlier absence.



We will now take Panel III. We have Mr. Frazier, Acting Inspector General, U.S. Department of Commerce; Mr. Allan Burman, President, Jefferson Solutions; and Mr. Sam Collins, Engagement Partner, Deva & Associates.

Mr. Frazier, thank you very much for responding to the committee's invitation. We are anxious to receive your testimony.

**STATEMENT OF JOHNNIE FRAZIER, ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, D.C.**

Mr. FRAZIER. Thank you, sir. Good afternoon, Mr. Chairman and members of the committee. I am pleased to appear before you today to discuss our review of the Patent and Trademark Office's plan to consolidate its facilities and operations and to accommodate its future space requirements.

We in the Office of the Inspector General have a longstanding tradition of reviewing many of Commerce's major real estate activities and working to promote the efficient management of the Department's facilities. Hence, we share the committee's interest in ensuring that PTO is housed in facilities that meet its needs in the most cost-effective manner. To this end, we welcome the opportunity to discuss the findings of our review.

Given the size and importance of this project, our office conducted a review to determine, first, whether it was justified, and second, whether PTO was effectively managing the critical acquisition phase of the project. We examined PTO's acquisition planning and procurement strategies, as well as its current working environment. We also examined the respective roles and responsibilities of the Department, PTO, and the General Services Administration. Our analysis did not cover the acquisition of new furniture or moving costs for the consolidated facility; that cost information was not available before we issued our report.

The results of our review were mixed. PTO was doing a number of important things well. Conversely, we identified areas of concern that warranted the attention of the Department and PTO managers. Let me briefly summarize for you our basic findings and recommendations, as outlined in our March, 1998 report. I will also update you as to what actions PTO and the Department have taken in response to our report.

First and foremost, we determined then—and continue to believe—that PTO has justified its need for more modern, contiguous space that is, one, more efficient and less expensive than its current facilities, and two, compliant with the Americans With Disabilities Act and various local health and safety codes. We therefore recommended that the project continue.

At the same time, we have been very vocal in highlighting a number of concerns and problems that we believe must be addressed to best minimize risk, improve efficiency, and keep the costs in check.

We reported that PTO had not completed its space planning, primarily because it had not reached an agreement with all of its employee unions over space-related issues. We also noted that PTO had not considered the full beneficial effect of its systems re-engineering efforts. As systems and processes become more automated and more efficient, less paper and fewer employees will probably be

needed. While PTO has reduced its space requirements by eliminating the patent examiners' paper search files, PTO believes that greater benefits from automation and reengineering will not be realized until it is moved into the consolidated facilities.

In addition, we were concerned over the build-out strategy that PTO was pursuing. Our main concern was the lack of a ceiling on the \$29 million cost for the above standard build-out.

Another of our concerns was the lack of a written agreement between PTO and GSA. We were primarily concerned that without such an agreement, the rights and obligations of each agency would not be defined, including PTO's right to relinquish unneeded space to GSA.

We also noted that GSA's fees were not defined, and that this could actually act as a disincentive for sound management practices.

Finally, we recommended that GSA continue in its role as the lease development manager.

PTO, the Department, and GSA all responded to our draft report. They have agreed with most of our recommendations. Not surprisingly, they agreed that the project should proceed. But I am also pleased to tell you that the Department and PTO have taken a number of steps to address our concerns. PTO has accelerated its space planning and is reportedly prepared to proceed with the contract award, using its draft space plan, even if it has not reached an agreement with all of its unions. Admittedly, this is management's dilemma. This approach is not ideal and increases the risk of schedule delay and the possibility of higher costs.

However, in our opinion, delaying the project will likely result in greater risk and higher costs.

As we recommended, PTO and GSA concluded a memorandum of understanding on September 4th, 1998. This written agreement addresses our concerns regarding GSA's fees, PTO's right to turn back unneeded space, and GSA's role as the construction manager. Although we have not yet had an opportunity to examine the fee structure in detail, the MOU appears to allocate risks between PTO and GSA and define the rights and responsibilities of each agency.

There was, however, one area of strong disagreement. PTO did not agree that a contractual ceiling for the build-out was necessary to reduce the risk of cost growth. PTO suggested that the annual budget process would ensure that the Government resources were not wasted. Here also there has been progress, though. Our concern that PTO did not have a firm ceiling on its \$29 million build-out is being addressed, by the Congress, primarily, and PTO and GSA also, with legislation pending in both the Senate and the House. There seems to be growing Congressional support for the \$29 million ceiling.

In addition, PTO and GSA have agreed to manage the build-out effort to this ceiling. As an added safeguard, we would like to see this ceiling expressed in the contract itself.

In closing, I would like to reiterate my belief that PTO needs to continue to move forward with its competitive space consolidation project because it is in the best interest of the Department and the inventing public. We believe that the greater risk lies in delaying

this project. At the same time, I cannot overemphasize the importance of carefully managing this project to contain costs as it continues.

This concludes my statement. I will gladly answer any questions. Senator WARNER. Mr. Collins?

**STATEMENT OF SAMUEL R. COLLINS, ENGAGEMENT PARTNER, DEVA & ASSOCIATES, P.C., BETHESDA, MARYLAND**

Mr. COLLINS. Mr. Chairman, I am Sam Collins. I'm the Engagement Partner for the Certified Public Accounting firm of Deva & Associates. I am pleased to testify today before the subcommittee on the activities of my firm relating to the space consolidation effort of the U.S. Patent and Trademark Office.

Under contract with PTO, Deva & Associates published a report entitled, "U.S. Patent and Trademark Office Business Case Analysis of Space and Facilities Management." Before I discuss the activities of Deva with respect to this particular project, I would like to give you a little bit of background information on myself and the firm, since the National Taxpayers Union and others have taken a few shots at our credibility.

I am a Certified Public Accountant with over 25 years of public accounting experience, 13 of which were with the firm of Ernst & Young. I have provided accounting, auditing, and consulting services to Federal and local agencies, to real estate developers, to property managers, to the banking industry, and to major public companies, including Fortune 500 companies.

My real estate, banking, and finance background were primarily the reason I was selected to be the project leader for this process.

My firm is a firm of certified public accountants and management consultants. We offer a wide variety of audit and financial consulting services, including cost accounting, cost analysis, cost benefit, renovation, relocation, construction. My partner, Arun Deva, is also a former partner of a Big Five firm, and he was there for over 15 years. Our key personnel mostly have big firm experience, and we all have experience serving large and complex clients. In addition to the PTO, our other Federal clients include HUD, Treasury, Labor, the Office of Thrift Supervision, U.S. Trade Development Agency, Small Business Administration——

Senator WARNER. Mr. Collins, we accept your credentials.

Mr. COLLINS. OK. Thank you, sir.

Senator WARNER. We're not here to debate that.

Mr. COLLINS. Our effort on this project started, of course, when the PTO requested an independent validation of the projected costs. The first phase of our project was for an internal evaluation that was used for the 1999 budget review. Subsequent to completing that process, there was additional input from outside sources. The project was changed, to do an agreed-upon procedures report.

One thing was consistent throughout the process, everything that my firm did for PTO was on time and within budget, which has been another criticism out there.

The business case analysis, which was the final product under discussion now, had two objectives: to present a cost analysis comparing the current and consolidated scenario and attendant operating costs, with equivalent costs under a consolidated scenario. We

analyzed the cost effectiveness of the consolidated scenario. In all cases, we tried to get an apple-to-apple comparison of the physical move costs, including the above standard costs associated with managing such a project. The study itself was to cover the initial 20-year period of the proposed lease with consideration of the project costs from both sides of the picture as fairly and as thoroughly as possible.

There were some constraints. There was reliance on documented evidence, where it existed. Where there wasn't documented evidence, we tried to be very conservative in our approach. A lot of the considerations were to make, like I said, the apples-to-apples comparison. The application of cost escalators was used from the Congressional Budget Office so that everything would be stated in today's dollars.

Now, the basic line for the process—we have every lease analyzed in the report. The report is a rather voluminous process. The conclusion was that PTO would incur, on a present dollar basis, under an unconsolidated basis—which is basically a continuation of where they are today—\$1.031 billion. The costs on a consolidated basis would be \$958 million and would result in a savings of \$72.4 million.

The process went through a detailed review. Then, just to make sure that the process was fair, it was then scrubbed by PTO, the Department of Commerce, the Office of Management and Budget. They all went through the process, and then Jefferson and BTG also reviewed the basic approach.

I did want to point out that most of the information was generated by sources other than my firm. We did not create the data, but it was provided for us to review and determine its reasonableness.

The final report was issued. I was very pleased with the product. I was also pleased to hear that the subcommittee expressed their approval. In essence, they said on June 26th, 1998, that they had reviewed the report and presented a very positive—I thought—impression of the report.

Now, before concluding, I would like to address just a few of the issues that have been the hot topics today, what I call the "shower curtain flap."

Senator WARNER. It is important to do that, but have you adequately told us where you got the worst case numbers?

Mr. COLLINS. In this situation within the report?

Senator WARNER. Yes. I have the report——

Mr. COLLINS. I have my own copy here.

Yes, sir. With respect to the furniture, what we had was the best estimate available—what we were trying to come after was a best estimate of what it would take to furnish the new facility. And there was a study existing that everyone agreed was a reasonable approach to what the furnishings should be.

Now, in trying to be straightforward with the whole process, the entire summary copy of that report was included in here, so that the source was readily identified.

This report was pulled together primarily off of construction mean schedules, which are based on commercially available information with respect to what those costs would be. A lot of the fur-

niture and fixtures in the consolidated scenario are going to be built in, so you have construction costs associated with those.

So you have to review that every item in this furniture section as not only the cost of the furniture itself, it is also the cost of installing it in the project. The shower curtain itself is not just a shower curtain. It is summarized, it says, "a curtain"—but this is not the chenille curtain that you find at Macy's or wherever ABC went during their review. Basically what we have here is a shower closure, OK? It includes all the hardware associated with that and installation of it.

Senator WARNER. Well, you have to be a little more careful in your articulation of things.

Mr. COLLINS. Right. Unfortunately what I had here was—I took an existing document and brought it forward into this report. We did not rewrite the document. This is the document that has existed, that was created by the contractor who did the study. What we did was, we looked at the prices and got explanations when we saw a few of the items. The \$1,000 coat rack is a closet. The \$309 urn is a smoking area that includes a table and four chairs. You know, there's something behind most of the suspects that is more than the sound bytes that's making them newsworthy.

Now, what I did do——

Senator WARNER. Well, welcome to the Nation's Capital, which runs on sound bytes.

[Laughter.]

Mr. COLLINS. That's right.

Senator WARNER. But the tragedy is that this thing went all over the airwaves of America, and it looked like—it made us all look like fools——

Mr. COLLINS. Yes, sir.

Senator WARNER.—this committee, the Patent Office, and everyone else. And then, of course, once there is blood in the streets, you are off and going. And that's what I'm here today for, to try to bring light on this thing.

So you confess error in the terminology and the manner in which you described these particular items?

Mr. COLLINS. Well, sir, I won't take exception to the fact that I didn't make the description, but I did include the description in the report, so I am responsible in that light.

There was some discussion of this issue, and it was decided at the time that full disclosure was better than no disclosure. If we put numbers out there for furniture and didn't show the backup, then it would be worse—hindsight is always little more accurate.

Anyway, the process that we're talking about on the unusual costs that have drawn all the attention—they are still only about 1.2 percent for the furniture costs, or about \$760,000. While, I'm not saying that's something to sneeze at; we're talking about a project much bigger than that, and we're talking about savings of \$72 million, which I still view as being very viable.

That concludes my statement and I would welcome any questions you might have.

Senator WARNER. Let me go to my next witness, Mr. Burman, and then I may return with further questions here.

**STATEMENT OF ALLAN V. BURMAN, PRESIDENT, JEFFERSON SOLUTIONS, WASHINGTON, D.C.**

Mr. BURMAN. Mr. Chairman, I am Allan Burman, President of Jefferson Solutions. I appreciate the opportunity to review with you the findings of our May, 1998 report on the Patent and Trademark Office, prepared for the Secretary of Commerce. I do have a lengthy statement; if you will, I would like to submit it for the record and briefly summarize my remarks.

A little bit of background on solutions. We provide management consulting and training services to the Federal Government, and our focus has been on acquisition and change management matters. I am a former Administrator for Federal Procurement Policy. I served in that position in an acting capacity under President Reagan; I was confirmed by the Senate under President Bush, and President Clinton asked me to stay on in that post, so I served in that position for a lengthy period of time.

Our firm won a competitive award in March to provide an independent multidisciplinary review of PTO's 7-year consolidation and space acquisition process. In that effort we teamed with BTG, Inc., and Economic Research Associates. Together with us, we had skills in acquisition, real estate valuation, engineering, architecture, and cost estimation.

Now, the task that we set out to do was to independently validate the process in four major areas: the need for new space; the type and amount of space; PTO's management of the process; and PTO's response to the Inspector General's concerns.

Now, in my prepared statement I list many of the findings, conclusions, concerns, and recommendations on this project. I don't want to go through all of those here, but our bottom line conclusion, Mr. Chairman and Senator Sessions, is very straightforward. We felt that Commerce and PTO should proceed with the procurement. We reviewed all of the studies, going back to the very beginning efforts in this process, back to the Leo Daley study that was completed in February 1992. We reviewed the solicitation in great detail. We met with key officials at Commerce and GSA. We analyzed the space needs. We examined the Deva study—this was a major effort, an extensive effort, with many people involved in that process. Our view was that PTO has done a good job with carrying out the project.

In our view, Mr. Chairman, there is really a basic question here that needs to be answered. I think everyone here has recognized that PTO foresees increasing workload over the next few years, and we know that their current space is inadequate and substandard. So the question is, what should PTO do?

The way we see it, Mr. Chairman, there are two options. They can either cut a sole source deal with the current landlord, or let competitive procurement tell them what is the best result. And particularly, do a competitive procurement when their current landlord is one of the bidders in this process.

Our recommendation was very straightforward. In our view, the answer is very clear-cut, that we should have PTO and GSA and Commerce follow Congress' own mandates of the Competition in Contracting Act, go through this procurement process, get all the information available that they can get about the offers and the op-

portunities that might be available to them, and then make the best decision for themselves and the taxpayer.

Mr. Chairman, that concludes my remarks. I will be happy to take any questions you might have.

Senator WARNER. Mr. Frazier, there are charges made that it is a better investment for the taxpayer to stay in the current location. Have you reviewed whether it is cheaper for the PTO to stay in its existing buildings? Have you run an analysis of that?

Mr. FRAZIER. We didn't run a separate analysis per se. However, we received a complaint and a concern about our report at one point in time, suggesting that that might be the case. So, I had the individuals who had worked on that project look at those complaints, and in the process what we were able to determine that if things stayed as they currently were, then PTO still would not be able to have the kind of contiguous space that it felt was necessary. It would not be able to accommodate the growth in the patent process, the increasing number of employees. It would not be able to be in compliance with local laws. It would not be able to be in compliance with the Americans With Disabilities Act.

We believe very clearly now that it's in the Government's best interest for the project to move forward. Keep in mind that if nothing happens, we still are going to incur significant costs. I think that there sometimes is confusion that we're talking about an additional \$1 billion. Keep in mind, over the next 20 years, if we retain the status quo, we're going to incur at least that amount of cost, and still not get the kinds of improvements that everyone has agreed are clearly needed.

Senator WARNER. You recall when this matter was before the Senate, I joined Senators Brownback and Inhofe on an amendment. Are you familiar with that amendment?

Mr. FRAZIER. Yes, I am.

Senator WARNER. Was that effort done such that it addressed the kind of concerns that you have identified in your report?

Mr. FRAZIER. Very much so. In fact, we think that the Congress is going to be a key player here. I think that it is an accepted fact now, that there is a cap in place. The \$29 million build-out for the above standard cost was one of our primary concerns. So the proposed amendment actually gave us an additional level of comfort.

We are recommending that PTO go a little further than that, where they would incorporate that same ceiling or cap in the agreement, "not to exceed." God forbid that it came in at \$28 million or \$14 million; that would be fine with us, but we think that that cap should also be included in the contract. That adds an additional safeguard.

Senator WARNER. Mr. Burman, in your testimony, you say, "The proposed project produces an economic benefit to the PTO in excess of the current market conditions."

Could you expand on that?

Mr. BURMAN. Yes, sir. Economic Research Associates took a look at what the current market was like here in the Northern Virginia area, the kinds of costs for rental space, and what we are finding is—of course, this process has been underway for some time—there is a very limited amount of space available. One doesn't know how much opportunity would exist if there were some delay in the pro-

curement, if the bidders lost that land, or something else happened to them. I believe in the Tysons Corner area, which isn't precisely the same area they're talking about, there are 2 percent vacancy rates. Rents are going up at 12 to 25 percent a year.

We believe that taking advantage of this procurement and doing it now makes great sense for the taxpayer.

Senator WARNER. That's very helpful.

Let me assure you, Mr. Frazier, that I and hopefully other colleagues will see that that cap goes into any continuing resolution so that it eventually becomes law.

Mr. FRAZIER. Let me assure you that we in the IG's Office plan to monitor this process until it is complete, whatever the outcome is.

Senator WARNER. I thank you for that.

Mr. Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Frazier, you noted something, and I think it was wise for you to do so, almost a disincentive on behalf of GSA if it is acting in its self-interest, which I assume it's not, and not in the public interest. But the self-interest would be to allow the cost to go up because they get a percentage of the cost, and the bigger the cost of the project, the more money goes to GSA.

Do you see that as something that Congress ought to concern itself with?

Mr. FRAZIER. Well, at the time we issued our draft report, that was a major concern. There was no agreement between GSA and the Patent Office, and that in fact could well have happened. There was discussion that the fees would range between 3 and 9 percent. We thought that they should come in under 6 percent.

In the MOU which was signed on September 4th, that issue has been addressed, because what you would have——

Senator SESSION. What kind of percentage did they settle on?

Mr. FRAZIER. It's going to be slightly under 6 percent, as I recall, slightly.

Senator SESSIONS. But if it goes up, they get more?

Mr. FRAZIER. I'm being told that it's capped by the prospectus, that they should not get any more.

Senator SESSIONS. Would they get a percentage of the \$29 million extra?

Mr. FRAZIER. No, they should not get any of that.

Senator SESSIONS. Their percentage would only be up to the \$88 million?

Mr. FRAZIER. To the \$88 million.

Senator SESSIONS. So that would not be their part of the project?

Mr. FRAZIER. That's right.

Senator SESSIONS. You did not compare occupiable square foot to occupiable square foot to make any representations to this committee that this building will come in less than the other building, did you?

Mr. FRAZIER. What we have done is look at the figures that PTO has been relying on, and confirmed those figures. So we did not do the——



Senator SESSIONS. So you have confirmed them, but have you analyzed what is hallway space and what is not occupiable and that sort of thing?

Mr. FRAZIER. During the course of our review, we were very critical of PTO in the early part of this process. I think that over time, PTO made many adjustments to deal with our issues. We raised lots of questions as to how they were classifying space in the hall and the square footage, and a number of issues. They became very responsive to dealing with those issues. The people that we had working on it spent a lot of time at PTO; I mean, they lived at PTO—

Senator SESSIONS. Well, I mean, that's their job, when they ask for a \$1.3 billion building.

Did you factor the relocation costs—first of all, is it your testimony that, from looking at the numbers, you believe that this new option would come in less than the current option?

Mr. FRAZIER. It will come in either less than or very close to what the current options are.

Senator SESSIONS. You would not agree with the \$74 million savings that Mr. Collins mentioned?

Mr. FRAZIER. I have not looked at those savings. The Deva studies and others were completed after our work, and we have not looked at that study.

Senator SESSIONS. But you're not prepared to guarantee that to us?

Mr. FRAZIER. No, but as I mentioned, we are prepared to surely stay on top of this. Cognizant of the fact that you are very much interested in these issues, it is wise of us to stay on top of them.

Senator SESSIONS. When you figured the cost, did you figure the \$29 million in what the cost would be, or the \$88 million build-out?

Mr. FRAZIER. When we issued our report, we were particularly concerned because there was not a cap; I mean, we went to battle with PTO over the \$29 million to get a good understanding of it because we wanted to make sure, like you, that it was not for extravagant kinds of things.

As it turned out, when we looked at that, there were upgrades for the air conditioning—

Senator SESSIONS. I don't have a lot of time and I know it's late, but I guess I was just trying to ask, when you figured your cost comparison, did you figure it as GSA apparently did, on that \$88 million build-out, or did you figure it on the \$117 million?

Mr. FRAZIER. We primarily were looking at the \$88 million. The \$88 million is factored in—

Senator SESSIONS. So your analysis that shows it would be less costly is based on the \$88 million and not the \$117 million build-out?

Mr. FRAZIER. We were looking at the \$88 million. The \$29 million—again, above standard—is a one-time fee that will be paid by PTO. It will be paid by PTO. The \$88 million is included in the lease payments. So the \$29 million is a one-time fee, and once we got a cap on that and once we feel that that's incorporated in, then that still should not raise the cost of the project more than we are currently paying.

Senator SESSIONS. But have you made that analysis?

Mr. FRAZIER. No, we have not gone into detail on that.

Senator SESSIONS. All right.

Mr. Collins, is that the way you figured it? Did you figure the \$117 million? You also say it will come in at \$74 million less?

Mr. COLLINS. At \$72.4 million.

Senator SESSIONS. At \$72.4 million. Do you stand by that number?

Mr. COLLINS. Yes, sir, I do.

Senator SESSIONS. Are you sure that Arthur Andersen is not correct in saying that there would be a \$47 million increase?

Mr. COLLINS. Well, I got the Arthur Andersen report about the same time that it was available to the committee. It was passed out at the back of the room. I did peruse it, and I can say right now that I will still stand by my numbers.

Senator SESSIONS. All right.

And are you sure that when you worked the numbers, you compared occupiable space to occupiable space?

Mr. COLLINS. Yes, sir. Absolutely.

Senator SESSIONS. So you're comparing apples to oranges—apples to apples with regard to these numbers?

Mr. COLLINS. Apples to apples.

The quote there within the other process is unfortunate, but our study is totally built on occupiable square footage, and the comparison is apples to apples all the way.

Senator SESSIONS. Mr. Burman, are you aware that there has been some challenge to your mathematics in figuring the office space?

Mr. BURMAN. Right. We did not do an evaluation of consolidated versus unconsolidated. That was done by the Deva folks, and we reviewed that.

In our study we did identify occupiable space and rentable space in our summary in looking at the rental rates for each. In one of the tables there was a transposition of the numbers, but the table was meant to describe what are the current market rates for Government-type buildings that have been built over the last few years, and private sector buildings, to get some feel for whether this looks to be in the general area of what other people are paying.

We stand by our study in terms of making that judgment, that it does satisfy those conditions, Senator Sessions.

Senator SESSIONS. Well, you have an unusually stable client in PTO.

Mr. Collins, another Senator asked about whether or not the National Taxpayers Union had talked to the owners of the current building. I would assume they have; that's a good source of information. They've been living with these numbers, it's important to them.

Likewise I would note for the record that you have been hired by PTO. You are their employee, to give them their numbers, and I know you know that they want very much for this building project to go through. I'm not questioning your integrity, but I would suggest that you didn't err against them intentionally, for sure.

Mr. CHAIRMAN——

Senator Warner. Senator, you didn't know that they were asked by the appropriators to do this report?

Senator SESSIONS. No, I didn't know that. But you were hired by PTO.

Mr. COLLINS. That's right. But a Certified Public Accountant is always a hired gun.

Senator SESSIONS. Well, I know. Like MIA; you know what that means. I used to do real estate law.

Mr. COLLINS. But one thing for certain, I don't put my independence at one particular—

Senator SESSIONS. I understand, but in complicated matters like this it does come down to some question of judgment. Sometimes you put it on one side of the line, or not.

Mr. COLLINS. I would say, in most cases, this one went the other way. This was more conservative than I would have taken it if I was playing an advocate role.

Senator SESSIONS. Well, I will just say this, Mr. Chairman, I am going to be really surprised if this building comes in for less than the other one. I know it was sold on that basis, and I have serious doubts that it will. But this has been a very helpful hearing. You have provided a full forum. You have let everyone that has had an objection come forth and have their say. You have been very patient and courteous with me at this late hour, and thank you very much.

Senator WARNER. Well, thank you, colleague, and we'll work further on this.

I have before me this famous report, the Arthur Andersen report. It's dated September 17. This committee asked for it shortly thereafter and were denied it, and it didn't get here until just before the hearing started. So I don't know why—if we had had it a little ahead of time, it would have been helpful to the committee, but it's just another example of our struggle to get information in a timely way so that we could have prepared our hearing in such a way as to have this evaluation. But we will evaluate it. The committee has a perfect right to get it; I mean, the competitors—there is fierce competition.

Give me 1 minute. I want to explore something, and you were out of the room.

Senator SESSIONS. OK.

Senator SESSIONS. Would you expedite a copy of this transcript for us? We do have a hearing next week.

Senator WARNER. We will do that.

Senator SESSIONS. Thank you, sir.

Senator WARNER. Let's go to the famous "shower curtain" page. This is page 6 of 6. You know where it is; you can find it, right? [Laughter.]

Mr. COLLINS. Which chart are we talking about?

Senator WARNER. Well, 24.2 Joint Use Space, General Use.

Mr. Peck, if you would be kind enough to return to the witness table, please.

Item No. 7, Training Facility, Locker Room, Curtain, Shower, 6, \$250 a copy.

Mr. COLLINS. Yes, sir.

Senator WARNER. You got it?

Mr. COLLINS. Yes, sir.

Senator WARNER. Now, that's fair game. It was thrown into the public domain, and anybody that wants to criticize that could do so. But I've listened very carefully to the testimony, and you admit that this is, let's say, an insufficient description of that particular item.

My question to both you and Mr. Peck is this. Had an objective person wanted to know what was behind the \$250, to where would they have gone to get the backup material to explain, No. 1, that it's far more than a shower curtain, and that there was a basis in fact for the \$250?

Mr. PECK. Let me answer it first for GSA. Anyone could have called our project team in our National Capital Region and gotten an explanation of the backup.

Senator WARNER. Well, where physically is the backup material?

Mr. COLLINS. I believe it's with the Space Acquisition Group at PTO.

Senator WARNER. Any PTO folks left? Yes—could you kindly help us, if you would come forward and identify yourself?

Ms. BARNARD. I am Jo-Anne Barnard. I am the project manager for PTO, and there is backup material resident with my staff. These estimates were prepared by ICF Kaiser Engineers, who is an integrated occupancy services contractor that is working for me under a competitive procurement that GSA conducted for us.

Senator WARNER. Can you provide the committee with the backup material on this particular item that is under question?

Ms. BARNARD. Yes. We'd be glad to do that.

Senator WARNER. And you don't have it with you today?

Ms. BARNARD. No.

Senator WARNER. Can you sort of describe what the backup says, from memory?

Ms. BARNARD. Well, basically it's my understanding that what ICF Kaiser did, at the time that we asked them to do this, we asked them to develop an order of magnitude estimate of what we might pay for furniture. They basically, based on their experience with other Federal projects, with private sector projects, with calls to the private sector—for example, in this instance I asked the gentleman who developed the estimates, and he said that he had called a number of equipment manufacturers for fitness centers and gotten bids on what a heavy duty rod installed on already-in-place tile with a mildew-resistant fixture in a fitness center would cost. We have obviously had numerous discussions about "Why did you describe it as a shower curtain."

Senator WARNER. Well, that's fine.

Let's once again detail everything that comes with this \$250 item. What are the pieces? What is it?

Ms. BARNARD. Basically what it is, is a heavy-duty rod that has to be installed on tile after the tile is installed——

Senator WARNER. Does the \$250 cover the cost of installation?

Ms. BARNARD. Yes, it includes installation.

Senator WARNER. So it's a heavy-duty rod, to begin with. It covers cost of installation. There is some type of fabric that is draped from the rod, is that correct?

Ms. BARNARD. Right, and it's protected so that——

Senator WARNER. What's protected?

Ms. BARNARD. It's constructed so that if somebody hangs on it in a fitness center, if somebody hangs onto it, it's going to stand up. I mean, it's not a lightweight shower curtain like you might install in your home. It's going to be in a public facility—in a heavy-use facility.

Senator WARNER. All right. But is that added strength, from the combination of the rod and the material used—is that something that is specified by the Government today? I mean, this is the hand grenade that rolled out into the public domain and has been all over the airwaves, and I'm struggling now to figure out what you get for \$250. And I have to believe that persons that wanted to criticize this project, on seeing that, either knew one of two things: that it wasn't a curtain, or that it was a lot more than a curtain. And if you took a little initiative, I expect they could get to your office or Mr. Peck's office and find out what other component parts would add up to \$250.

Am I correct in that?

Ms. BARNARD. Yes.

Senator WARNER. OK. Help us. What do you get for \$250? And is it something that is specially required now in Government contracting?

Mr. PECK. No, sir.

Senator WARNER. Then who came up with the idea that you would want to chin yourself on the handlebar of the shower curtain?

[Laughter.]

Mr. PECK. Let me be clear. We have some specifications for Government construction, and we have specifications in our lease solicitation for what needs to be in the building. This is at a level of detail that is not covered by Government specifications. It is something that, as people go to try to estimate costs—I mean, it's that microlevel at which people try to come up with cost estimates on things that are far below the level at which we ask for specifications. We say that we're going to have a fitness center, and it's going to meet commercial equivalent standards. That's the general way we say it.

Senator WARNER. OK. I think you have satisfied my question. It is not required by the Government. Someone made this decision. Does anybody have any idea who might have done it?

Ms. BARNARD. Basically, as I said, it was an order of magnitude estimate that was developed very early in the process of what might be the total that we would spend on furniture. Right now my office is in the process of developing detailed cost estimates which will serve as the basis for future budget requests. Obviously, we're not going to be going forward and requesting authorization to purchase any \$250 shower curtains.

Senator WARNER. But to the public, it's here. I mean, I'm not here to criticize. We can make a mistake, but you've tried to clarify it—Mr. Collins did—and I listened very carefully, and he said there's some backup data, and that this wasn't simply a curtain, but it was component parts.

So let's once again—for \$250 you get a very strong rod, a very strong fabric, both of which I presume cost more than comparable things in every home in America.

Now, what else was incorporated for the \$250, if there was something else?

MS. BARNARD. Well, it's my understanding it's a heavy-duty, mildew-resistant fixture, installed on tile. The biggest expense is the installation because it's installed after the facility is already constructed—

Senator WARNER. Which means you have to go in and tear out something and put it back?

MS. BARNARD. Well, I mean, you have to go in and install it after the facility has already been built, so it's the installation cost that is the biggest part of that estimate. Plus it's an estimate that is escalated out to the time of construction, which is in fiscal year 2001 and 2002.

Senator WARNER. A factor for inflation, is that it?

MS. BARNARD. Yes.

Senator WARNER. Well, I guess I understand. But I saw you shake your head. You know, I started out in civil engineering, except that I determined that it was too darned hard to earn a living at it, and I went into politics.

[Laughter.]

Senator WARNER. So I'm going back to my rudimentary civil engineering. As I understand it, you build this shower and then go back and have to integrate this. Could it not have been integrated as the shower was being put together? I mean, the facility, the locker? Wrong, Mr. Peck?

Mr. PECK. Senator, I didn't do so well in Junior High School Shop, so I'm the wrong person to ask, too. But I will tell you that I don't know how they actually fabricate these things.

The point I would like to make is that in estimating on a building project, at some point you go in and ask people what are the costs of doing various things. This happens to us all the time on our projects—which, by the way, some of the contingents here notwithstanding, I will just note again as I said last week, we brought in seven courthouses this year on budget. So we can manage these things.

But at some point in managing all of these projects you do get estimates for all kinds of things, which you look at and you say, I'm not paying for that; that's too much money. And what we got caught in here—and I have to say, I think it was disingenuous on the part of some people to repeat it without asking whether there was a decision made to pay for this—was that someone put out that we were prepared to go spend this on a shower curtain—No. 1, we weren't saying that we were going to buy it in the first place, and second, not knowing that it was more than a shower curtain. But I will tell you on behalf of the Government, it's our fault if we let that kind of mischaracterization of an item get out.

Let me make one other point. We are not talking about a \$600 hammer—

Senator WARNER. Given the magnitude of this thing—I mean, accidents and mistakes can be made. I think I'm talking about two things. The Government has to do the best they can to eliminate

these types of errors. But we're all human, and errors are made. But it seems to me that if I wanted to do an objective criticism of this project and I saw that item, before I went on ABC network news I would have simply called around and found some idea of what was behind it, and second, are you seriously considering spending this amount?

Now, I think you have answered both questions, that there was a source of information that could have explained that it's not only a simple curtain, but a rod and associated construction costs, and that it would never be the intention of PTO to acquire this. Now, both of those answers were available if someone had sought them.

Mr. PECK. Yes, sir. That's correct.

Senator WARNER. All right. Well, I think that I've covered this as best I can.

Our Senate is now meeting at something at which I have to attend, but I thank all witnesses, all participants, and I'll spare you my opening statement; but let me tell you, it's worth reading. It will be in the record.

[Laughter.]

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

I would like to thank you for testifying today on the Patent and Trademark Office consolidation.

As the chairman of the Subcommittee on Transportation and Infrastructure, we have heard and approved the prospectus for the PTO consolidation. I am convinced that the prospectus presented to us in 1995 represented an excellent, cost-effective approach to accommodating the needs of this rapidly growing agency of the Federal Government.

PTO's mission is one that cannot be neglected as we move ahead in a high-tech global economy.

Similarly, PTO's ability to perform that mission cannot afford to be compromised by forcing the agency to conduct business in outdated space that is not configured to meet its operational needs.

The approval resolution, which I authored, established a rental cap of \$24 per square foot. In 1998 dollars, that is \$25.41 per rental square foot which is less than the current lease rate for PTO's existing leases. These leases average \$26 per rentable square foot.

In my book, getting new and renovated consolidated space for less than we now pay for older space is good for the taxpayer.

In my opinion, every member of this committee, that supported this resolution is an excellent "friend of the taxpayer."

Since the Committee took its action, there have been criticisms expressed about this project. To my knowledge, each and every one of these has been looked into, either by Congress, the Commerce Department Inspector General or the Secretary of Commerce, including engaging outside analytic services.

Each report has concluded that the competitive procurement should proceed.

Still, questions persist...

The purpose of this hearing is determine which of these concerns are valid and which have been raised by an offeror seeking to gain some competitive advantage, or to undermine competition altogether.

To the extent that any of these concerns are validated, it is Congress' job to make sure that there are strong mechanisms and containment measures in place to control these costs.

Where there are not adequate controls, we must provide them.

I look forward to the testimony from today's witnesses.

Senator WARNER. The hearing is concluded.

[Whereupon, at 6:45 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF ROBERT PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

*Introduction*

Good afternoon, Mr. Chairman, and Members of the Committee. My name is Bob Peck, and I am the Commissioner of the Public Buildings Service (PBS). I am pleased to appear before you today to report on our assistance to the Patent and Trademark Office (PTO) as they consolidate their complex of offices Northern Virginia. By competitively procuring a 20-year operating lease, we are providing up-to-date, efficient, and cost-effective office space that will support PTO's requirements. This is a project that makes good business sense and that is in the best interest of the government.

PTO now has offices in 18 different buildings. Many need alterations to meet fire, life-safety, and handicapped accessibility guidelines.

Given other priorities; for example, the courthouse construction program, there likely will be no funds available in the foreseeable future to build a facility for PTO. The Committee authorized a 20-year operating lease because its present value cost compares favorably with that of construction.

The Congressionally approved rent limit is roughly equivalent to rates that PTO is currently paying and is equivalent to current market rates in Northern Virginia.

If the project is delayed, extending existing leases with fundamental building improvements to match market comparables would cost an additional \$6.4 million annually—\$32 million over the typical 5-year lease extension.

The technical specifications for the project are not lavish. The specifications are not unique to the Government and they are comparable to other consolidated headquarters facilities.

Ongoing Congressional oversight, an audit by the Inspector General of the Department of Commerce, and a review by a contractor commissioned by the Secretary of Commerce—all support the conclusion that we should continue with this space consolidation project. The justification and the process for this procurement are valid. It is the right thing to do.

*Background*

I would like to give you some background. The General Services Administration (GSA) and PTO have been working together since 1989 on plans to consolidate and update the PTO offices. On October 24, 1995, this Committee authorized an operating lease for a complex on a site in Northern Virginia. On November 16, 1995, the House Transportation and Infrastructure Committee also authorized this project.

The PTO has been located in leased facilities in the Crystal City area of Northern Virginia for more than 20 years. Incremental procurement of space over these 20 years has resulted in PTO currently occupying space under 33 separate lease agreements in 18 different buildings. Interaction and cross research among the various PTO patent technology groups is an integral part of the patent and trademark examining process. Because of this requirement, physical proximity is essential to efficient operations.

*Alternatives Analysis*

Many different alternatives were investigated prior to the proposal of an operating lease procurement in the prospectus submitted to the Congress on July 18, 1995. Since it is not clear that PTO's current space requirements will be needed over the long term (beyond 20 years), leasing was deemed to provide the needed flexibility in dealing with the impact of emerging technologies on PTO's operations and the amount of space required to house them. Also, options such as direct Federal construction, purchase, and lease-purchase would have required GSA to obtain full budget authority for the project prior to its inception. Competing demands on the Federal Buildings Fund made the attempt to fund any of these options unrealistic.

Typically in major metropolitan markets, Federal construction has a lower present value cost than leasing at market rates. However, at the rental rate specified in the approved prospectus, the present value cost of leasing compares favorably with that of direct Federal construction. This is because the rental rate was established in the prospectus to qualify the lease as an operating lease.

*Evaluation Methodology in the SFO*

The project specifications are comparable to those used for other recent Federal agency consolidations—IRS, New Carrollton; Health Care Financing Administration, Baltimore; NASA, Washington.

Construction standards included in the SFO do not require or specify lavish finishes or amenities. They are intended to provide space and services in the most cost-effective manner over the term of occupancy. For example, the SFO requires that



lobbies "shall employ high-quality materials which are durable and easily maintained." This is just good building practice in a heavily trafficked public area. The per-square-foot interior build-out cost is comparable to other government projects with a base building in a "cold, dark shell" configuration.

On December 23, 1996, six (6) Phase One offers were submitted. After evaluating these offers in accordance with the Phase One evaluation criteria stated in the solicitation (qualifications of sites and development teams), four (4) offerors were invited to submit Phase Two offers. Phase Two proposals were received on October 27, 1997. GSA has been engaged in active evaluation of these proposals and discussions with offerors since this date. Three (3) sites remain under consideration. A fourth site was withdrawn from competition earlier this year.

GSA expects to request, by the end of this month, that the remaining offerors submit their best and final offers (BAFOs) in response to the solicitation. These BAFOs will be evaluated in accordance with the Phase Two evaluation criteria stated in the solicitation (proposed facility design, willingness and ability to mitigate environmental impacts, and qualifications of the interior architect and maintenance firm). Following this evaluation, GSA will identify for award the offeror whose proposal represents the greatest overall value to the Government, price and the above referenced evaluation factors considered. We expect to be in a position to identify the winning offeror prior to the end of this calendar year.

#### *Procurement Review*

This procurement and the procurement process itself have been extensively reviewed. An audit by the Inspector General of the Department of Commerce (Report No. IPE-9724, March 26, 1998) and a review by a contractor commissioned by the Secretary of Commerce support the conclusion that we should continue with this space consolidation effort.

There have also been questions about extending the existing leases, where such options are in place, versus leasing other space at market comparable rates. We contracted with Spaulding and Slye to prepare a market analysis. The analysis, which was completed on July 31, 1998, indicated that extending existing leases with fundamental building improvements to match market comparables would cost an additional \$6,410,000 annually. The government would pay an additional \$32,070,000 over the typical 5-year extension term.

#### *Conclusion*

Mr. Chairman, I appreciate this opportunity to update this Committee on our progress and to assure you that we will continue to act in the best interest of the government in providing PTO the consolidated space that they require. I would be pleased to answer any questions the Committee may have.

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#### RESPONSES BY ROBERT PECK TO ADDITIONAL QUESTIONS FROM SENATOR SESSIONS

*Question 1.* The Inspector General made 11 recommendations in its March 1998 final report on the PTO space consolidation effort. Please specify whether or not the Patent and Trademark Office and/or the General Services Administration has fully complied with each of the recommendations made by the Inspector General:

Recommendation No. 1: PTO should continue with its lease development project. We understand that PTO is continuing with its lease development project. When will the lease be awarded?

Recommendation No. 2: PTO should finalize its analysis of its space requirements. Has the PTO finalized its space requirement analysis? If yes, how? If no, why not? If no, when?

Recommendation No. 3: PTO should work to conclude its agreements with employee unions. Has the PTO completed all of its agreements with employee unions? If yes, how? If no, why not? If no, when?

Recommendation No. 4: PTO should assess the impact of PTO's re-engineering initiatives on PTO's space needs. Has the PTO complied? If yes, how? If no, why not? If no, when?

Recommendation No. 5: PTO should prepare a discrete build-out budget (including an absolute limit of the government's liability for build-out in the SFO) before lease development award so that PTO can incorporate it into its negotiations with developers. Has the PTO complied? If yes, how? If no, why not? If no, when?

Recommendation No. 6: PTO should not appoint a PTO representative to serve as the contracting officers representative until construction is complete and lease payments begin for the new facility. Has a PTO representative been appointed as the contracting officer's representative? If not, does PTO intend not to appoint a

PTO representative to serve as the contracting officer's representative until construction is complete and lease payments begin for the new facility? If no, why not?

Recommendation No. 7: PTO should specify that the developer/lessor must accumulate costs at the lowest individual task level before lease development award, in order to control and monitor costs during the build-out phase. Has the PTO complied? If yes, how? If no, why not? If no, when?

Recommendation No. 8: PTO should execute a written interagency agreement with GSA to record the terms and conditions of the agencies' oral understandings. It is my understanding that this has been done. What are the essential terms of this arrangement?

Recommendation No. 9: PTO should not agree to any arrangement with GSA in which the GSA fee to be paid is set as a percentage of costs which are not capped. Have PTO and GSA complied? If yes, how? If no, why not? If no, when?

Recommendation No. 10: PTO's Chief Financial Officer and Assistant Secretary of Administration should provide oversight, assistance, and guidance to ensure that PTO completes its POR space requirements in time to avoid delaying the lease award. Is PTO's Chief Financial Officer and Assistant Secretary of Administration providing oversight, assistance, and guidance? If yes, how? If no, why not? If no, when? Will PTO complete its POR space requirements in time to avoid delaying the lease award? If yes, how? If no, why not? If no, when?

Recommendation No. 11: PTO's Chief Financial Officer and Assistant Secretary of Administration should establish effective oversight policies and procedures. Is the PTO complying? If yes, how? If no, why not? If no, when?

Response: Since this series of questions is generally within the purview of PTO, they are answering in their response to a similar October 1, 1998, letter from you to Commissioner Lehman.

*Question 2.* Several times in your oral testimony you stated that the cost per square foot under the proposed procurement would be less than the cost per square foot under the current lease. I have several questions relating to this: a) Is it true? b) What is the blended cost per occupiable square foot under the proposed procurement? c) What is the blended cost per rentable square foot under the proposed procurement? d) What is the blended cost per occupiable square foot under the current lease? e) What is the blended cost per rentable square foot under the current lease?

Response: It is true that the rent under the proposed procurement will be less than the rent under the current lease. In fiscal year 1998 dollars, the Congressional authorized limit of rent for the PTO Consolidation procurement is \$28.29 per occupiable square foot or \$25.41 per rentable square foot. Contrast this to the current average rent payments of \$28.57 per occupiable square foot or \$25.66 per rentable square foot. Further, the authorized rent for fiscal year 1999 under the consolidation would be \$29.12 per occupiable square foot or \$26.15 per rentable square foot. Currently, a private sector developer is constructing space which the Government has recently space in Crystal Park 5 and, as a result, the average fiscal year 1999 rent payments will be \$29.35 per occupiable square foot or \$26.36 per rentable square foot. Therefore, it is indeed true that the cost per square foot under the consolidation will be less than the cost per square foot under the current lease.

The above is a direct comparison of fully serviced lease rates. The efficiency of the currently leased space was used as the most equitable efficiency assumption for the proposed space (rentable = 1.114 x occupiable). The Congressionally authorized (prospectus) rent will be the maximum rate that GSA will pay. Procurement competition should drive the actual proposed rent at a consolidated facility, lower than this maximum amount.

*Question 3.* In your written testimony you stated that the Spaulding and Slye analysis concluded that if the existing leases are extended, it would cost an additional \$6.4 million per year, due to "fundamental building improvements." I have several questions.

a) Are there any other factors other than fundamental building improvements that account for this \$6.4 million figure? If so, what are they and what is the cost factor for each item?

b) What are the specific fundamental building improvements? For each one, provide a description of the item and cost? c) by the procurement was delayed for only 1 year, so leases had to be extended for 1 year, which of the fundamental building improvements would have to be made in that year? d) by the answer is that none of the improvements would have to be made for only a 1-year extension, does that mean that there would, in fact, not be additional costs to extend the lease for 1 year?

Response: In order to answer your question succinctly, let us first explain the derivation of the \$6.4 million difference in cost between exercising the extension op-

tions and leasing space at a market comparable rate. Please refer to section four of the Spaulding and Slye report that explains what was included in the analysis of the redevelopment costs. GSA removed the costs of advertising, leasing costs, rent up deficit, and contingency from the \$/rentable square foot column of each of the three itemization sheets between page 30 and page 31 of the report. When the corresponding new rates are multiplied by the space for which GSA has extension options within each of the classifications, the resulting upgrade cost is \$71,281,000. The existing lease options include \$16,438,000 in upgrades, so only the \$54,840,000 difference was capitalized at 9 percent to yield the \$6,410,000 per year.

The three pages of the Spaulding and Slye report between page 30 and page 31 list the fundamental building improvements while their descriptions are in the preceding section four. The only modifications made to these sheets for the GSA calculation are the removal of the costs listed in the paragraph above. The modifications were made because the Spaulding and Slye report was focused on the market (opportunity) costs to re-lease space, and GSA wished to focus on the lessor's direct costs to bring the space to market comparable condition. You will note that the report indicates that some of the existing space can never be remodeled to Class "A" condition.

It would be uneconomic, as well as foolhardy, for either the Government or the current landlord to expend the money for even the basic life safety and Americans with Disabilities Act requirements if any of the current leases were extended for only 1 year. The Spaulding and Slye study indicates that rent rates within Crystal City exceed rent rates for comparable space outside of Crystal City. Therefore, if the procurement were delayed for a year, the Government would be paying more in rent for the current leases than the largely Class "C" space warrants. In addition, GSA would not be getting life safety improvements or handicapped accessible space.

*Question 4.* Interior build-out costs were the focus of much discussion at the hearing. Unfortunately, many of the answers were confusing. To set the record straight, I ask the following questions:

- a) What is the total cost of the build-out from all sources? Please identify the sources, and the cost per source.
- b) Is it \$117 million (\$88 million from GSA plus \$29 million in above standard build-out from PTO)
- c) Is the total cost figure you cited in the answer to the previous question an absolute ceiling? Could it go higher?
- d) Using all sources, what is the total cost of the build-out per occupiable square foot?
- e) What is the cost per occupiable square foot for build-out according to the GSA standard in the GSA Advanced Acquisition Program?
- f) What is the cost per rentable square foot for build-out according to the GSA standard in the GSA Advanced Acquisition Program?

Response: The SFO is structured such that the lessor must construct a "cold dark shell" and then must provide a fit-out allowance of up to \$88 million for construction of the interior improvements. The source of this funding is the lessor, as reflected in the rental payments made by GSA on behalf of PTO. In the event that the lessor is able to construct the space for less than \$88 million, the Government is entitled to either a lump sum payment from the lessor or a rental credit equal to the unused balance. In addition, PTO has indicated that it may provide a lump sum payment of up to \$29 million for certain additional improvements to support its particular mission.

The \$117 million total one time cost figure is an absolute ceiling as agreed in the Memorandum of Understanding between GSA and PTO. In addition, the \$88 million is limited by the terms of the SFO which state that this allowance must be included within the rent, which is limited by the Congressional authorization. The actual total cost will not be known until after completion of the project, but it will not exceed the \$117 million.

The total cost of the build-out will range from less than \$44.24 per occupiable square foot (in the event that the Government does not use all of the \$88 million allowance) to a maximum of \$58.82 per occupiable square foot when the \$29 million in lump sum payments by the PTO are included. This equates to a range from less than \$39.71 per rentable square foot to a maximum of \$52.80 per rentable square foot. This calculation assumes the 11.4 percent conversion factor from the current space (see Answer 2). This factor will undoubtedly change for the actual consolidation space.

Lump sum payments by agencies are not ordinarily included in the reporting of the Advanced Acquisition Program (AAP) build-out costs. The comparable costs per square foot range from \$30.96 per occupiable square foot for office space without any special use spaces (including build-out from a "cold dark shell," typical fit-out allow-

ance, design/lessor fees and construction cost escalation—but not including any lump sum payments) to over \$85 per occupiable square foot for special use space such as judicial chambers. The highest portion of the range happens only on rare occasions. This equates to a range from \$26.92 per rentable square foot to over \$73.00 per rentable square foot. This calculation assumes a 15 percent increase in space to convert from occupiable to rentable.

*Question 5.* I also note that your answers to questions about the Reagan building were confusing. Please answer the following questions:

a) What was the total, estimated cost of the Reagan building authorized in the prospectus?

b) What was the total actual cost of the Reagan building now that the building has been built and all the cost figures are now known?

c) What is the total occupiable square footage of the government space in the Reagan building?

d) What is the total rentable square footage of the government space in the Reagan building?

e) What is the annual payment for the Ronald Reagan building?

f) Mr. Peck mentioned a favorable financing rate for the Ronald Reagan building. Please provide details about how the building was financed including the financing rate and the process by which the favorable rate was obtained.

g) What is the anticipated annual financing rate for the Patent and Trademark Office building? If this rate is different for the PTO complex, why is it different?

Response: The Congress directly authorized the Pennsylvania Avenue Development Corporation to construct the Ronald Reagan Building through specific legislation (Public Law 100-113, the Federal Triangle Development Act). Accordingly, the project was not subject to the prospectus approval process that other GSA projects go through, and the law did not include an estimated cost.

While the building has been substantially completed, a limited amount of construction is still ongoing and there are still several construction claims that are yet to be settled. The estimated cost of the Reagan Building continues to be \$738 million.

The total amount of occupiable space in the building is 1.83 million square feet. Of this total, the International Trade Center occupies 0.50 million square feet and Federal agencies occupy 1.33 million square feet. The total amount of rentable square footage in the building is 2.16 million square feet. Of this total, the International Trade Center occupies 0.59 million square feet and Federal agencies occupy 1.57 million square feet. CAUTION: Dividing the cost of \$738 million by any of the area numbers from this paragraph will not yield a rate that is in any manner comparable to the PTO project maximum rent rate or proposed build-out cost per square foot. First, a true comparison between constructing a facility and leasing the same facility can only be made by including the time value of money. Second, the rates that have been stated for the PTO include all utilities and maintenance while the figures for the Ronald Reagan Building do not.

The expected annual payment for debt service on the Ronald Reagan Building is \$65 million. This does not include utilities and maintenance. Approximately 97 percent of the scheduled borrowing from the Federal Finance Bank has already occurred. The estimated cost of the additional 3 percent is included in this expected annual payment.

The Ronald Reagan Building is being financed through Federal Finance Bank debt issues. On a periodic basis, construction costs are certified and a corresponding amount of principle is borrowed. Each time this occurs, the Federal Finance Bank issues a separate note to GSA. Over 70 individual notes, with interest rates ranging from 5.874 percent to 8.380 percent have been issued to date. This total encompasses approximately 97 percent of the total project borrowing and reflects the change in interest rates over the past 6 years. The weighted average financing rate for these notes is approximately 6.8 percent. The utilization of Government debt sourcing and positive changes in the capital markets has provided the opportunity for these favorable rates.

The anticipated annual financing rate for the Patent and Trademark Office building(s) is unknown at this time since it will be dependent on market interest rates at the time of financing. GSA will play little or no part in the determination of the interest rate. It will be the result of a business decision between the offeror and his lender influenced by market conditions and tenant credit. The Government is in the process of modifying the lease structure to the extent permitted within the definition of an operating lease in order to secure the most favorable interest rate in consideration of the Government's credit strength.

*Question 6.* I have several questions relating to the Arthur Andersen report: a) Page 16 of the report states that the Jefferson Solutions Report confused occupiable and rentable square foot in one of its key calculations. Is Arthur Andersen correct? b) The bottom line conclusion of the Jefferson Solutions Report is that the cost per square foot under the proposed procurement would be less expensive than the cost of staying in the current location. Arthur Andersen is correct, and if the true numbers are inserted into the calculations, does this not reverse the conclusion? In other words, with accurate numbers, would not the Jefferson Solutions Report show that the relocation to a new facility would result in higher direct lease costs?

Response: The Deva study and the Jefferson Solutions report which the Arthur Andersen report addresses were commissioned by the PTO and Department of Commerce respectively. PTO will provide the answer to this question.

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STATEMENT OF BRUCE A. LEHMAN, ASSISTANT SECRETARY OF COMMERCE AND  
COMMISSIONER OF PATENTS AND TRADEMARKS

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen: Thank you for inviting me to appear before you today to discuss the ongoing project to consolidate the Patent and Trademark Office in leased space.

Unfortunately, there are many misconceptions about our competitive procurement for space, including a few that may stem from imprecise information we provided the public. Therefore, I am very pleased that you provided us with the opportunity to dispel these misconceptions, address Congressional concerns, and to build a constructive approach to proceeding with this important procurement.

The Patent and Trademark Office (PTO) began working with the General Services Administration (GSA) in 1989 to address our long-term housing needs. Our partnership with GSA is driven by three overriding goals: (1) improving the PTO's housing situation; (2) complying with all Federal procurement laws and regulations; and (3) getting the best economic value for the PTO's fee-paying customers.

I am happy to report that our two agencies recently executed the Memorandum of Understanding that sets forth our respective responsibilities for project execution and project costs. Completion of this Agreement satisfies one of the key items that the Department of Commerce's Inspector General recommended for effective project management and cost control.

*Improving PTO's Housing Situation*

For over 25 years, PTO operations have been housed in buildings that the General Services Administration leases for us in Crystal City, Arlington, Virginia. We now occupy approximately 1.7 million occupiable square feet of space in 17 different buildings. Later this year, we will accept expansion space in yet another building, bringing our total leased inventory to about 1.88 million occupiable square feet scattered throughout 18 buildings. This is only 120,000 square feet—about 6 percent—less than the approximately 2 million occupiable square feet we are seeking in a consolidated facility.

The distance from the northernmost to the southernmost of our existing buildings is over one mile. The entries and rest rooms in a significant portion of the buildings are not accessible by the disabled. Wheel-chair bound employees and customers cannot use the above-ground, climate-controlled passage that links the Crystal Park and Crystal Plaza buildings and crosses traffic-ridden Crystal Drive. The oldest buildings, which comprise about 604,000 square feet, are not equipped with sprinklers. Further, these buildings are not readily adaptable to the automation age. To free up electrical capacity required for our automated systems, for example, we recently had to replace lighting fixtures with more electrically efficient devices. This replacement cost us \$810,000.

The separation of PTO operations throughout many non-contiguous buildings generates inefficiencies and increased costs. Our trademark operations are located at the south end of Crystal City, over a mile from the information dissemination operations. When we move our fastest growing patent industry sector—the group with the largest proportion of new examiners—to Crystal Park 5 later this year, the group will be located over one half mile from the Patent Academy training facilities. As a result of our dispersion, we must provide a shuttle bus service between buildings.

America's prosperity has generated significant increases in our workload. Between 1991 and 1997, trademark applications increased, on the average, 11 percent annually, and patent filings had a double-digit increase in the last two-year period.

The natural consequence of our growth is a need for larger, more efficient space in an environment that is equipped to accommodate the sophisticated technology

that our employees need to do their jobs well. I was pleased to see that both the Department of Commerce Inspector General and Jefferson Solutions, the independent contractor that the Secretary of Commerce selected to review our space project, agree with me on this issue. The Inspector General, in his March, 1998 report on the project, stated that the "PTO has supported the basic requirements for and benefits of the new development based upon its need for modern, contiguous space." He noted that the new facility should allow us to meet our future staffing requirements better, improve access for employees and customers, and improve compliance with laws governing fire, safety and accessibility for the disabled. Also, Jefferson Solutions concluded that consolidation will result in greater flexibility; compliance with accessibility standards, life safety and building codes; and support for our reengineering efforts.

The Solicitation for Offers that the General Services Administration issued on our behalf is a performance specification that is designed to deliver a facility comparable to those provided to other recently consolidated Federal agencies. The bulk of the technical requirements restate the very provisions that GSA has published in its nationwide construction guidelines or included in solicitations for other headquarters consolidations. Unfortunately, some believe that the requirements or standards are lavish. For example, they apparently believe that use of granite and marble surface materials is grandiose, when, in reality, they are merely examples of surfaces for lobbies that are durable and easily cleaned. They also appear to question the desirability of standard features in large, modern suburban office complexes. The trails would contribute to the physical well-being of our employees and their morale. Furthermore, attractive quarters including landscaping promote morale and retention of our employees. Such amenities are present on our current site. None of these features, however, would add to our costs as they would be supplied within the fixed lease rental rates. Similarly, the child care center, the cafeteria, and the fitness center that some have questioned are also facilities that are provided in equivalent Federal and large private sector projects. Despite numerous statements by the General Services Administration and a private independent reviewer—Jefferson Solutions—to the contrary, the incorrect perceptions of excess remain.

#### *Compliance with Procurement Laws and Regulations*

Competition lies at the heart of the Federal procurement system. The Competition in Contracting Act of 1984, 41 U.S.C. 253, mandates "procurement through full and open competitive procedures" unless an agency can demonstrate that it falls within the scope of one of seven stated exceptions. Not one of these exceptions to competition applies in PTO's case. Therefore, the prospectus that the Administration submitted and that Congress authorized states the General Services Administration's intent to conduct a competitive, "best value" procurement to acquire a long-term lease to house the PTO. To allow time for GSA to complete the competitive process, the prospectus also authorizes GSA to "make an interim lease(s) for the tenant agency, if necessary, prior to the execution of a new lease." GSA informs me that it has made 33 such interim leases for PTO, with varying terms and provisions.

Unfortunately, there are a number of popularly held misconceptions about these interim leases and the costs involved in the procurement. For example, in its May 1998 Wastewater dispatch, Citizens Against Government Waste states that ". . . PTO has secure term leases in place and has options to remain in its current location until the year 2014." What this organization fails to appreciate is that these are sole source leases. Any options contained in these leases can only be exercised if there is a sole source justification for doing so. There is none. Furthermore, it is our understanding that neither this Committee nor its counterpart in the House of Representatives gave GSA a prospectus authorization to provide for the PTO's long-term housing by means of sole source lease extensions. Thus, the prospectus authorized in October 1995 was, in accordance with the Competition in Contracting Act, an authorization to conduct a competitive lease acquisition. It is my understanding that securing a new sole source long-term lease on our current space could require approval from this committee.

Similarly, the Smith Companies urged that the Inspector General of the Department of Commerce reconsider his conclusion that consolidation of the PTO pursuant to the Congressionally-approved prospectus will be cheaper than PTO's remaining in our current space. The Inspector General responded that, after carefully reviewing the information that the Smith Companies had provided, he is "satisfied that our report conclusions and recommendations are accurate."

The conclusion that consolidation, consistent with the terms of the prospectus should proceed, is bolstered by the findings of Jefferson Solutions. One finding is that the rates PTO are now paying for much of its space are "well above the market price for space that can be defined as depreciated (nearing obsolescence), Class B

space.” Jefferson Solutions also concludes that, as a result, consolidation pursuant to the terms of the prospectus “produces an economic benefit to PTO in excess of current market conditions.” GSA informs me that similar conclusions were reported recently by Spaulding and Slye, a nationally recognized real estate firm. Their report was prepared for GSA in response to questions that GSA had received from the House Subcommittee on Public Buildings and Economic Development of the Committee on Transportation and Infrastructure regarding the market value of the PTO lease extensions. Spaulding and Slye found that, to justify the rates that are being sought under the PTO’s lease extension options, the PTO’s landlords would have to make improvements to these existing structures. These improvements would cost several tens of millions of dollars more than the landlords are offering under the terms and conditions of the existing PTO extension contracts.

Regardless of their terms, these extension options are for 18 separate, non-contiguous buildings that do not serve the PTO’s needs. We believe that we should proceed without delay in accord with applicable law, with a competitive space procurement when there is such abundant evidence that our customers will save money by going forward with the procurement.

#### *The Economics*

Since 1991, the PTO has been fully user fee funded. All of our operations are paid from appropriations of the fees paid by our national and international customers—patent and trademark applicants and those who use our other services. No general taxpayer funds support our operations. Therefore, no general taxpayer funds will be expended to make the lease payments under the consolidated lease.

Taxpayer groups charge that although PTO’s proposed 20-year lease results in \$1.3 billion in lease payments, the Government will not own the facility at the end of the lease term. The General Services Administration, the Department of Commerce and the Office of Management and Budget thoroughly evaluated the benefits of leasing versus purchase, Federal construction and other housing alternatives (such as lease purchase), before submitting the lease prospectus for Congressional approval. A long-term lease also makes sense because of our efforts to reduce paper and adopt technologies that reduce our space requirements in the long term. Given the limited Government funds available for capital investment at the time, it was recommended that the “leasing” option was the best method available to serve our customers’ interests. As you know, this Committee and the House Committee on Transportation and Infrastructure concurred.

Furthermore, we understand that Members of the Senate Committee on Appropriations also believed that no funds would be available in the foreseeable future to purchase or construct a facility to house the PTO. In plain English, purchase was simply not a feasible option.

A business case analysis prepared for the PTO by the certified public accounting firm of Deva & Associates, however, shows that even after the potential costs of consolidation are considered, consolidation will save \$72,395,278 (in 1997 dollars) over the 20-year period. These consolidation costs, which we expect could be nearly \$135 million, include such items as furniture and telecommunications purchases, costs for the physical move, lost production during the move, and any double rent payments that may be necessary. Whether we consolidate or not, we will spend in the range of \$1.3 billion in rent. However, delaying the procurement delays our ability to enjoy the benefits of this \$72 million cost savings to our fee-paying customers.

Also, much has been said about the furniture estimates that are contained in the Deva Report. These estimates, prepared by my staff, were intended to represent the “order of magnitude” of the total purchase price of new furniture for the consolidated facility. Deva & Associates used these cost estimates to compute the maximum amount that the PTO might spend on new furniture and included this amount in their computation of the consolidation costs.

These estimates are not furniture purchase plans and they are not furniture budgets. We have no intention of purchasing \$250 shower curtains or \$ 1,000 coat racks. We are now in the process of developing a furniture purchase plan that will include standardization, use of GSA schedules, and competitive acquisitions with the goal of generating significant quantity discounts.

Moreover, the nature of the items that were listed in the estimate has been misconstrued. We will purchase beds—for a health unit; and cribs—for the child care center. The “shower curtains” that have drawn so much attention will be installed in the fitness center, and will consist of either an installed shower enclosure or a heavy duty, mildew resistant fixture installed over tile that is already in place. The “coat rack” will actually be a coatroom in a training facility. Our use of unfortunately cryptic descriptors for estimated furniture costs certainly should not delay a project that will save PTO’s customers more than \$72 million.

Finally, some have alleged that the solicitation that GSA issued on our behalf favors new buildings, and, as a result, discriminates against some potential vendors. In fact, GSA has, in several instances, adjusted the solicitation specifications to accommodate those with existing buildings.

#### *Conclusion*

The Inspector General of the Department of Commerce, an independent consultant, and many of our user groups reviewed the facts and determined that the competition should proceed. It is time to move forward and start realizing that \$72 million in savings.

Thank you.

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#### STATEMENT OF MICHAEL K. KIRK, EXECUTIVE DIRECTOR, AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

Mr. Chairman: I appreciate the opportunity to present the views of the American Intellectual Property Law Association (AIPLA) on the efforts of the United States Patent and Trademark Office (USPTO) to procure consolidated space for its operations.

The AIPLA is a national bar association whose nearly 10,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community. The AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent and trademark law, as well as other fields of law affecting intellectual property. AIPLA members interact with patent examiners, trademark examiners, and their clerical support staff on a daily basis. They know from these contacts that many of the USPTO employees are forced to work in cramped quarters with inadequate furnishings and equipment. Many examiners, now forced to share rooms, are denied the privacy they need to efficiently search and examine patent and trademark applications and to consult with applicants regarding prosecution issues.

The USPTO is currently housed in 17 buildings located in the Crystal City complex in Arlington, Virginia. These buildings range in age from the late 1960s, when the USPTO first moved to Crystal City, to the mid 1980s. Few of these buildings were constructed for modern electronic communication networks that will facilitate the electronic search systems that examiners will increasingly use. In addition, the buildings, far from being contiguous, stretch out through a nearly one-mile-long corridor in Crystal City, creating considerable lost productivity as the employees traverse between and among the various buildings. To alleviate the problems which the USPTO employees and their customers must endure because of these cramped and outdated facilities, AIPLA believes that the Office should acquire adequate space. At the same time, since we, the users of the patent and trademark systems, will pay through our fees for the cost of the facilities leased by the USPTO, we believe the acquisition of space by the Office should be evaluated against appropriate criteria. To that end, we developed the following guidelines:

- any facility should be competitively procured, taking price and quality into consideration
- any facility should be convenient to MetroRail to provide convenient access by employees and users
- any facility should be "automation-ready" to house modern electronic communications networks
- any facility should provide private offices for examiners, but reflect the private enterprise trend toward downsizing and standardizing office size
- any facility should provide employees reasonable amenities, comparable to those in the private sector, including sufficient parking, health facilities, day care, and reasonably-priced eating facilities
- any facility should be sufficiently compact and interconnected to promote efficiency of operations
- any facility should, with the approval of Congress, have such "above-standard" items as are customary in businesses (e.g., uninterrupted power supplies for computer systems).

To alleviate its cramped conditions, the USPTO and the General Services Administration (GSA) began working on alternative approaches to meet the USPTO's long-range requirements in 1989. After considerable study and negotiation, the Office of Management and Budget authorized GSA in 1995 to send a prospectus to the House and Senate requesting permission to acquire a competitively-procured, twenty-year operating lease for the USPTO's space needs. The prospectus was approved by the Senate Committee on Environment and Public Works on October 24, 1995



and by the House Committee on Transportation and Infrastructure on November 16, 1995.

AIPLA believes that the Solicitation For Offers (SFO), published by GSA on behalf of the USPTO following the approval by Congress of the prospectus, generally comports with the guidelines adopted by AIPLA. Accordingly, we believe that the solicitation should proceed under the watchful eyes of Congress and the user community.

We are aware of a campaign over the last 15 months to convince Congress that the SFO is too extravagant. At his request, I met with a Mr. Edward Newberry of Patton Boggs, L.L.P. in July, 1997. Mr. Newberry had indicated in a telephone conversation that the USPTO was seeking a grandiose and elaborate headquarters facility and that the USPTO could satisfy its space needs in a much more modest facility. I understood that Mr. Newberry represented one of the then four bidders on the SFO, the Charles E. Smith Company, which is also the principal landlord for the USPTO in its current space in Crystal City. Nonetheless, in light of the allegations made, I concluded that it was important to learn more and to investigate the merits of Mr. Newberry's claims. I asked Mr. Newberry to put his concerns in writing, which he did. The material was then made available to the USPTO with the request that they respond to the allegations. We invited representatives from the House and Senate Judiciary Committees, the Intellectual Property Owners Association, the American Bar Association, and the International Trademark Association to join us in an effort to separate fact from fiction.

At the meeting with USPTO officials, we discovered that, when the allegations contained in Mr. Newberry's letter were placed in perspective with factual information which was omitted, the allegations were not only unpersuasive, but frequently misleading. For example, it was stated that the USPTO plans to spend \$88 million to outfit and furnish the interior of their new facilities and that, if the USPTO were to accept a standard, high-quality building typical of government agencies, some \$48 million would be saved. What the correspondence neglected to mention however was that the SFO requests an unfinished shell, and that the \$88 million would be used to complete the building according to the USPTO's operational needs. More importantly, no mention was made of the fact that this \$88 million must be paid by the successful bidder who could charge the government no more than the Congressionally-imposed limit of (in FY 1998 dollars) \$25.41 per rentable square foot. The cost of Crystal City space utilized by the USPTO today averages \$26 per rentable square foot, and recent space provided to accommodate the expansion of the trademark examining operation costs approximately \$27 per square foot. Thus, the successful bidder for the consolidated USPTO space must charge less than the current average per square foot rent paid by the USPTO and provide the \$88 million for build-out.

The USPTO has indicated that the standard in their build-out for individual office sizes for examiners will be 120 square feet—20 percent smaller than the room sizes in the current facility and consistent with the guidelines adopted by AIPLA. On this point, it is not surprising that one of the USPTO's three unions opposes the consolidation plan. Even though each examiner will have a private office and even though 120 square feet will provide ample room for examiners to conduct their search and examination responsibilities, particularly in the electronic environment in which examiners currently work, this union has opted to argue for retaining their current larger rooms and forcing the users to pay the additional lease costs. It is telling, in our opinion, that the other two of the three unions have approved the SFO in light of the operational efficiencies it will bring about.

Earlier this year, the National Taxpayers Union (NTU) and Citizens Against Government Waste entered the fray, referring to the USPTO space consolidation as a "Taxpayer Ripoff." The same litany of alleged problems that Mr. Newberry had previously raised were set forth, such as, "high-priced programmable lighting systems" and the curious statement that many users oppose the new building because it could lead to massive increases in patent fees. First, it should be noted that programmable lighting systems are commonly used in modern buildings today because of their savings in energy costs. Secondly, I have not run across any users of the USPTO who fear that paying less for space will lead to massive increases in patent fees.

More recently, the NTU has argued that the USPTO will spend \$1.3 billion to lease—not own—this facility and that the environmental clean up costs could be as high as \$194 million. Again, if the USPTO stays in its present, decentralized, aging facilities, it will spend at least \$1.3 billion in lease charges over the next 20 years and actually more than it will pay under the SFO. While it is true that the USPTO will not own the building at the end of this period, there is no practical option under which that could be the case. Both the Office of Management and Budget, which controls the USPTO's requests for funds, and the Congressional Appropriations Committees, which approves those requests, have agreed that a competitive lease

of the type the USPTO is seeking is the only viable option available to the USPTO. There is no reserve of user fees nor any available taxpayer funds to actually construct such a building. In this regard, we note that, in a colloquy between you, Mr. Chairman, and Senator Gregg during the Senate debate on the Fiscal Year 1998 Supplemental Appropriations Bill, Senator Gregg agreed that no funds would be available in the foreseeable future to purchase or construct a facility to house the USPTO. With respect to the alleged environmental clean-up costs, the SFO places the burden of environmental clean-up, if any, solely on the successful bidder—not the USPTO. The Federal Government recently built a Federal courthouse on a portion of one of the two sites where a bidder is proposing to construct USPTO facilities, and the Department of Defense has been housed on a portion of the other site for over 25 years.

Finally, NTU has stated that the costs for moving the USPTO could be as high as \$130 million. In a review mandated by P.L. 105-174, Deva and Associates, PC, concluded that for the USPTO to stay in its present quarters, total costs over the 20-year life of the lease would be \$72 million greater than if it proceeds with the competitive procurement, after factoring in all the costs for moving, furniture, etc. The Deva study was reviewed by the USPTO, GSA, the Commerce Department Inspector General, the Commerce-Justice branch of the Office of Management and Budget, and, for the Office of the Secretary of Commerce, Jefferson Solutions, LLC, and their subcontractor, BTG, Inc. It is particularly worth noting that Jefferson Solutions and BTG found that the consolidation of USPTO space through a competitive lease would improve workflow efficiencies, improve the environment for employee retention, and most importantly, reduce lease costs. In short, they recommended proceeding with the current procurement without delays that would impact the schedule and costs.

The most recent attack criticizes the USPTO's space consolidation effort on the basis of estimates of the cost of furniture which were contained in the Deva report. The appendix to the Deva report contained an extensive listing of the estimated cost of the furniture which would be needed for the new USPTO facility. Those preparing this estimate chose to err on the high side to ensure that their estimate of the total cost of the move and furniture purchase would not understate the actual cost. Unfortunately, the report lists such easily-criticizable items as \$250 shower curtains and \$4,000 desks. While we understand that these estimates were intended to be worst-case scenarios and do not reflect the anticipated savings which would be realized through competitive volume discounts, nonetheless, we would agree that a number of these estimates are much too high even for worst-case scenarios.

It must be kept in mind, however, that even with these unfortunately high and questionable estimates, the Deva report still projects an overall savings of \$72 million if the procurement proceeds—a projection which no one has challenged. Moreover, recognizing that the furniture purchases associated with the move will be subject to intense Congressional oversight, it is certain that the actual furniture costs will be much less than the worst-case estimates in the Deva report. This Committee, the Appropriations Committee and the Judiciary Committee will have ample opportunity to ensure that, when the USPTO requests approval to purchase the furniture, the expenditures will be prudent and responsible. Delaying the procurement for yet another study will only serve to delay and diminish the benefits which the users of the USPTO will receive. On the other hand, proceeding with the procurement and applying a sharp pencil to the purchase of furniture in the future will serve to significantly enhance these benefits.

Finally, we note that the recent amendment offered by Senator McCain to the Departments of Commerce, Justice, and State, the Judiciary and related Agencies Appropriations Act, S. 2260, would have denied any funds for the planning or lease of a new facility until 90 days after the submission to Congress of yet another study on the results of a cost-benefit analysis of relocating the USPTO to a new facility. The study would have required an analysis of the cost associated with leasing in comparison with the cost of any lease-purchase, Federal construction, or other alternative for new space for the USPTO and to consider any appropriate location or facility not limited by geographic region. In addition to the fact noted earlier that lease-to-purchase or construction are not available options, relocating the USPTO outside of a 10-mile radius from its current location could have serious adverse consequences for the USPTO. If the Office were to be moved to a distant location, many of its current employees would not be able to stay with the Office. In addition, the USPTO would be required to pay the relocation costs for those of its 5,000 employees who chose to continue working for the USPTO. Clearly, the operational and financial consequences of such a move would reduce if not exceed the \$72 million savings identified in the Deva report.

One of the four final bidders on the SFO has already withdrawn. Additional significant delays of the type that would be experienced as a result of requiring additional studies would cause additional bidders to withdraw from the process. In the end, the USPTO would be forced to stay with its current landlord—in a sole-source situation—where there would be little, if any, incentive to restrain lease costs to the USPTO.

AIPLA strongly urges this Subcommittee, Mr. Chairman, to take all steps possible to allow this procurement to proceed as expeditiously as possible to its conclusion without further delay. In addition, I have been authorized by the Intellectual Property Owners Association and the Intellectual Property Law Section of the American Bar Association to express their agreement that the procurement should continue to conclusion without further delay for additional studies.

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STATEMENT OF PETER SEPP, VICE PRESIDENT FOR COMMUNICATIONS, NATIONAL TAXPAYERS UNION

Mr. Chairman, on behalf of the 300,000 members of the National Taxpayers Union, I am deeply grateful for the opportunity you given my organization to testify before the Committee today on our concerns surrounding the proposed Patent and Trademark Office (PTO) relocation. By holding these hearings, you have once again demonstrated your interest in seeing Federal funds expended in the most fiscally responsible manner possible. Taxpayers across the country are most appreciative that you, Mr. Chairman, and the Members of this Committee have taken the time to give this issue additional exploration.

*Introduction*

Because of the tendency of policy to become mired in polemics, I am compelled to make one statement from the very beginning. National Taxpayers Union comes here today without any financial ties to any party with a direct interest in the PTO relocation.

While we are convinced that a reasonable upgrade of PTO's present leased facilities in Crystal City would be the most frugal and responsible of the current alternatives, we could also support additional options in other states, as well as the choice of building rather than leasing—should further study prove any of these courses to be more cost-effective.

Our only interest in this debate is to ensure the wise expenditure of Federal dollars, and that the long-term interests of taxpayers are protected. Since its founding in 1969, National Taxpayers Union has analyzed and opposed numerous Federal public works projects, including the Tennessee-Tombigbee Waterway, the Westway Highway, the Ronald Reagan International Trade Center, as well as wasteful courthouse spending.

In deciding to oppose the current PTO relocation plan, members of our staff were (ironically) reminded of Ronald Reagan's stirring plea, "If not us, who? If not now, when?" Although some in the Administration have claimed that PTO's plans will not affect taxpayers at large, and that the reasoning behind the plan is fiscally sound, we have come to a far different conclusion.

*Why PTO Concerns Every Taxpayer—and National Taxpayers Union*

Throughout this debate, PTO officials have insisted that the entire \$1.3 billion lease and relocation will be "paid for by patent fees rather than general revenues from the taxpaying general public. This argument falls short in a number of respects.

*1) PTO customers are indeed taxpayers.*

Part of our organization's mission is to represent the concerns of all taxpayers, whether they are families, businesses, or small inventors. Our philosophy is grounded in the simple fact that every American is affected by the tax burden on his or her fellow citizens. Higher corporation income taxes, for example, are often passed along to the consumer in the form of higher prices on goods and services. Economists recognize that ultimately it is the worker who bears the "employer's share" of the payroll tax, in the form of lost wages the employer could have paid without the tax-induced overhead.

*2) While we support government "user fees" to cover the cost of specific services provided to certain customers, this concept, taken to its extreme, can inflict the same sort of damage that taxes often do.*

Patent fees, if levied to excess, could become a confiscatory "tax on innovation" that could very well discourage some of our nation's most important assets—small inventors—from fully contributing towards our robust private sector.

It is no secret that small businesses and entrepreneurs provide the fuel that keeps our economic engine running faster and better than most other nations in the race for economic vitality. Any policy that obstructs the flow of this fuel, however minor, can have a major impact elsewhere. If patent fees were to increase by even several hundred dollars, how many inventors would think twice about bringing their creations to market? How many links in the chain of minor discoveries that lead to major technological breakthroughs would be broken? How much would our nation's economic growth rate decline due to chances that could have been taken but weren't, opportunity costs?

Since I am not an economist by profession, I freely admit that I am not qualified to make such an estimate. But is it truly worth the risk to our economy to find out how much the fragile market of intellectual property will bear in government intrusion, after the damage has already been done? We would argue that such a risk is too great to justify a relocation that is ill-considered in the first place.

*3) The Federal Government's historical financial management problems have frequently confounded the best-laid plans.*

The Savings and Loan Industry, for example, poured billions of dollars in fees to the Federal Government's regulatory coffers. In the end, however, those fees did not come close to the tens of billions in general revenue spending that were required to bail out S&Ls in the 1980s and 1990s. The government's own pension system, designed to share costs through significant employee contributions to the plan, continues to rack up an unfunded taxpayer liability that has exceeded \$1 trillion.

What are the chances that PTO's fee structure could go similarly awry, and leave taxpayers with a significant liability? As each day passes in this Congress, such a threat grows nearer. Legislative language authorizing new PTO fee increases is buried in a controversial bill providing for the Office's eventual privatization. If this bill fails, PTO's planned funding stream could be jeopardized, leaving lawmakers to siphon money from general revenue sources.

Moreover, PTO's existing fee structure reportedly contributes over \$100 million per year towards reducing the Federal deficit. If this structure is renewed and these revenues are simply shifted to pay for the PTO relocation, the Federal budget surplus available to cut taxes will shrink, thus reducing potential tax relief for all Americans.

On the spending side, Federal public works projects have long run into fiscal pitfalls that ensnare taxpayers. The recently christened Ronald Reagan Building experienced cost overruns exceeding 200 percent. Before Congress terminated the project, the Superconducting Super Collider's price tag had risen by a well over 50 percent. From roads to courthouses to scientific research facilities, an all-too-familiar pattern has emerged. Optimistic spending projections give way to spiraling price tags as the projects are constructed, leaving Members of Congress with the flimsy excuse to their constituents that "too much has been spent to pull the plug now." Congress throws good money after bad, leaving taxpayers to make up the difference between fiscal fantasy and hard reality.

*4) Even more important than past history are the future consequences that PTO's plan may have on other Federal projects.*

The PTO relocation has been properly billed as one of the largest Federal construction undertakings of this century. The lessons learned, or not learned, from this project will have a tremendous impact on every subsequent initiative that addresses Federal office space. To name just one agency, the Department of Transportation is currently considering its future office needs and options. Such a facility, whether remodeled or relocated, leased or owned, will without a doubt be paid for largely through general revenues. Each and every American taxpayer will therefore have a direct stake in ensuring that PTO's relocation serves as a fiscally responsible model for the Federal Government to follow in all of its future blueprints.

#### *Specific Problems with PTO's Plan*

Having explained National Taxpayers Union's significant interest in the PTO relocation proposal, I shall now expand upon our greatest areas of concern. These points are based on our observation of Federal building and procurement policies from the taxpayer's perspective, rather than the technical viewpoint of a civil engineer or administrator.

*1) The PTO buildings could set new records for extravagance.*

"Interior build-out costs"—the price we pay for making the empty new building into a usable office—could, on a square foot basis, be more than double the standard rate for the rest of the Federal Government. It's not hard to see why, given the project's lavish granite, hardwood and marble surfacing materials. Other amenities include exercise facilities and trails, in-house cafeterias, expensive decor such as fountains and sculptures, and open-air amphitheaters.

The Commerce Department argues that many of these amenities, including “park? like settings,” already exist at its present complex. Absent from this explanation is whether or not additional amenities should be built just because they can be provided under the existing cap. No one would suggest that a U.S. government building with an important mission should look like a Soviet-style blockhouse. But is a “Taj Mahal” the only alternative? Taxpayers and PTO customers seem to believe that a more appropriate balance between form and function, often found in many private sector buildings, can apply here.

*2) The Federal Government would spend at least \$1.3 billion to lease, not own, this facility.*

Members of the Committee will no doubt recall the Ronald Reagan Building, the over-budget, behind schedule facility that made embarrassing headlines throughout the eighties and nineties as a “White Elephant.” Even this palatial pachyderm cost about half as much to build for the same amount of space as the PTO complex—and it’s built to last for 200 years, not just for a proposed 20-year lease.

PTO has long argued that a leasing option is more cost-efficient than renovating existing space. But this argument is becoming less and less compelling.

A detailed examination of PTO’s blueprint seems to suggest that earlier cost analyses were biased towards a predetermined conclusion—that a new facility was the goal of top PTO officials in the first place. For example, the Deva & Associates report comparing relocation versus renovation assumes that many features of the new buildings would have to be grafted onto a remodeled space. This methodology reduces many issues to absurdity. Perfectly functional restrooms in the existing facilities are assumed to be physically uprooted in order to comply with new specifications that offices must be within 200 feet of a restroom. Elevators may be retrofitted in a similar fashion.

I would contend that any plan with such contortions is likely to conclude that a new building is a better option. What it will not determine is whether such needs were realistic to begin with. In the Deva study, add-on cafeterias and pantries (the present site is within one mile of dozens of restaurants), day care centers, state-of-the-art fitness centers, and health care facilities have all been “deemed essential” by PTO. Their costs are added on to the present site for comparison purposes. Taxpayers and customers may have a different idea of what is “essential” for PTO facilities to serve their functions.

In addition, the September 17, 1998 Economic Review of a Potential Relocation of the Patent and Trademark Office, prepared by Arthur Andersen, strongly supports our contention that the proposed move may not be the most cost-effective choice. After study of both the Jefferson Solutions and the Deva & Associates reports, Arthur Andersen concluded:

Deva’s key assumptions significantly understate the costs of a PTO relocation.

Using prudent assumptions and accounting for some of the risks noted ... results in a \$121 million reversal in the Deva result, from a \$72.4 million savings if PTO relocates to a cost increase of \$47.7 million if PTO relocates.

Overall, the proposed PTO relocation project encompasses significant risk and would result in higher occupancy costs for the PTO.

The \$1.6 billion PTO relocation would be one of the most expensive and complex Federal programs ever—the Ronald Reagan Building and Portals projects demonstrate the adverse impact that unforeseen events can have on the cost and timing of huge Federal projects.

The risks associated with remaining in and improving existing facilities are considerably less.

Thus, Jefferson Solutions’ conclusion that the proposed relocation would result in lower direct lease costs to PTO is incorrect.

Based on the data presented in the report, a PTO relocation from its existing space to a consolidated facility would, in fact, result in higher direct lease costs.

*3) The price of moving PTO ought to be able to buy a whole new building.*

PTO’s costs just for relocating into the new headquarters could run more than \$130 million. One proposed moving plan would purchase \$65 million in brand new furniture, with price tags often higher than those found in the poshest Beverly Hills boutiques: \$250 shower curtains, \$750 cribs, \$309 ash cans, \$562 stools, and \$1,000 coat racks. Such outrageous proposals are perfect grist for radio talk show hosts.

PTO Commissioner Bruce Lehman recently told ABC news that these plans were “absurd” and “we’re not going to do that.” Such assurances are somewhat comforting, but taxpayers may be forgiven for remembering previous spending boondoggles on other projects that were supposedly cost-controlled:

Taxpayers shelled out \$218 million for a courthouse in Boston, MA, including \$1.5 million for a Marina and \$100,000 for a spiral staircase for judges and their staffs.

This was in addition to a \$370,000 elevator system already reserved for judges connecting the same floors.

After agreeing to pay some \$6 million to construct and lease Louisiana's George Arceneaux courthouse, the Federal Government held only two trials in the facility during its first 3 years of operation.

Pennsylvania's Delaware Water Gap National Recreation Area recently came under scrutiny for an outhouse that sported a \$78 per-gallon paint job, a foundation with 29-inch thick walls, and a slate-gabled roof. After government auditors decried media reports that the project cost some \$445,000, their own subsequent investigation discovered that the price tag was nearly twice as high.

Furthermore, PTO's explanation that the costs represented a "worst-case scenario" from a "consultant's study" are puzzling. If such costs appeared in an official proposal prepared for a private-sector firm seeking to relocate, would they not also raise eyebrows among accountants—and shareholders—concerned with the bottom line? Would they not raise questions about the judgment of those who would retain such a consultant and publish such a report? Business leaders may have their perks, but good public relations dictate limits to these practices.

*4) The government's own waste-watchers are waving red flags over PTO.*

Just 6 months ago, the Commerce Department's own Inspector General issued a comprehensive 44-page report concluding that the PTO plan is "flawed because the lease development project lacks a defined cost ceiling." The IG ominously warned, "PTO's build-out process needlessly exposes the government to increased cost risk." If the past is prologue the risk is real indeed. For 8 months in 1997, PTO mistakenly paid \$1.5 million to rent 73,000 square feet of space that was later determined to be vacant.

Furthermore, analysis of the General Services Administration's Draft Impact Statement shows that environmental clean-up costs of possible PTO relocation sites could be as high as \$194 million—some may contain carcinogens or even unexploded ordnance. And these costs are based only on limited investigations of the sites. Who knows what else could be lurking beneath the soil?

*5) Many employees and customers oppose the move.*

An impartial survey taken by the Patent Office Professional Association found that by a 3 to 1 margin, PTO employees represented by the association oppose the move to a new complex. Meanwhile, even high-profile inventors like Ross Perot are calling on Congress to stop the tax on innovation that this costly building will cause. When both the workers and the customers are saying 'No to PTO,' lawmakers should listen more carefully.

#### *Conclusion*

Recently, the Senate narrowly voted down an amendment to the Commerce/State/Justice Appropriations Bill from Sen. John McCain (R-AZ) that would have prompted serious reexamination of the PTO project. Although an amendment sponsored by Sen. Sam Brownback (R-KS) and Jim Inhofe (R-OK) to establish tighter cost controls on the PTO proposal did prevail, a wholesale reconsideration of the flawed project is still in order.

All too often, wasteful or low-priority spending projects are completed because Congress lacks either sufficient notice or the political will to stop the wheels of bureaucracy before they grind up our wallets. In the case of the new PTO facilities, however, Congress has adequate warning before any serious fiscal damage has been done. Unlike Nero's "Oedipus complex," Washington's "edifice complex" can be cured without costly therapy. All it takes is a little dose of common sense.

Once again, I thank you, Mr. Chairman, and the Committee for your generous and thoughtful deliberation of this critical policy matter.

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CHARLES E. SMITH COMMERCIAL REALTY.

TO: National Taxpayers Union, Citizens Against Government Waste, Patent Office Professionals Association, Alliance for American Innovation, selected Members of Congress

FROM: Kenneth L. McVearry, Executive Vice President

DATE: September 17, 1998

SUBJECT: Arthur Andersen Study

The Charles E. Smith Companies has submitted a bid to the General Services Administration, (GSA), for the proposed space consolidation of the Patent and Trademark Office, (PTO). In the course of our discussions with GSA and PTO, we have become concerned that their calculations for the cost of this project may be error. Accordingly, we commissioned Arthur Andersen to study and review this project, so

that this respected third part could analyze the data and render an independent judgment of GSA and PTO's methodology and conclusions. We know that you expressed an interest in this project. We hope that you will find the attached Arthur Andersen study informative.

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ARTHUR ANDERSEN

ECONOMIC REVIEW OF A POTENTIAL RELOCATION OF THE PATENT AND TRADEMARK  
OFFICE, SEPTEMBER 17, 1998

#### INTRODUCTION

Arthur Andersen reviewed two reports commissioned by the Patent and Trademark Office (PTO) and the Department of Commerce on the financial impacts of a potential PTO relocation from its existing office and related facilities in Crystal City to a "hypothetical" consolidated location in Northern Virginia. These reports are:

- "Business Case Analysis of Space and Facilities Management" prepared by Deva and Associates, P.C., dated May 22, 1998 ("Deva report"); and
- "Facility Space Analysis for the Patent and Trademark Office" prepared by Jefferson Solutions, BTG, Inc., and Economics Research Associates, dated May 15, 1998 ("Jefferson Solutions" report).

The purpose of this review was to assess the reasonableness and validity of the methodologies, major assumptions and key findings of these reports, focusing on the cost and financial impacts.

- The Jefferson Solution's report addressed several aspects of PTO's procurement process, one of which was a cost assessment of a PTO relocation. This assessment was a "high-level" overview that compared direct lease costs on a per square foot basis; the report did not present detailed calculations, nor did it consider other related costs. We reviewed this analysis and our observations are presented herein.

The Deva report was a much more thorough analysis of the cost implications of a PTO relocation from its existing facilities to a hypothetical consolidated location complying with the terms of the GSA Solicitation for Offers. The Deva report compared two scenarios: 1) the costs of staying in PTO's existing facilities, but improving them at considerable expense to meet PTO's needs for the next 20 years; and 2) the costs of relocating to a hypothetical consolidated site in Northern Virginia. We reviewed the Deva report and the economic analysis upon which its conclusions were based. Our review of the report included its methodologies, assumptions and findings. Our review was limited to the Deva report, including the narrative and the description of the economic model, including summary tables.

We also reviewed and relied on certain information in other documents to prepare our analysis. A list of these documents is located at the end of the report.

The conclusions and findings outlined in this report are based on information available to us as of the date of this report. Subsequent events with respect to the Solicitation, developer bids, market conditions, etc. have not been considered in this report and could have a material impact on our analysis and findings.

The remainder of the report consists of:

- Summary of Major Findings;
- Executive Summary that provides a more expansive overview of our analysis and conclusions;
- Detailed review of the Deva and Jefferson Solutions reports; and
- Bibliography.

#### SUMMARY OF MAJOR FINDINGS

Arthur Andersen reviewed two reports commissioned by the PTO and the Department of Commerce on the financial impacts of a PTO relocation from current facilities in Crystal City to a hypothetical consolidated location in Northern Virginia.

These reports are "Business Case Analysis of Space and Facilities Management" by Deva and Associates, P.C. (May 22, 1998) and "Facility Space Analysis for the Patent and Trademark Office" by Jefferson Solutions, BTG, Inc., and Economics Research Associates (May 15, 1998).

These reports concluded that a relocation of the PTO to a consolidated facility would result in lower occupancy costs over a 20-year period.

OUR REVIEW OF THESE REPORTS IDENTIFIED SIGNIFICANT ISSUES REGARDING KEY ASSUMPTIONS THAT WE BELIEVE RESULT IN INACCURATE CONCLUSIONS.

- Our review concludes that a relocation of the PTO from its existing facilities under the terms of the SFO would result in higher PTO occupancy costs over a 20-year period.

THE RESULTS OF THE DEVA REPORT DO NOT JUSTIFY A PTO RELOCATION.

- Deva estimated that a move to a consolidated site would result in Government cost savings of \$72.4 million, but these savings are marginal when measured against private sector requirements for embarking on a risky, billion dollar, multi-year project.
- Deva did not adequately address or discuss the significant risks of a PTO relocation. These risks include possible construction budget overruns, financing complications, higher operating costs, environmental issues, traffic congestion, disrupted employee commuting patterns, and costs to other government agencies.
- The \$1.6 billion PTO relocation would be one of the most expensive and complex Federal programs ever—The Ronald Reagan Building and Portals projects demonstrate the adverse impact that unforeseen events can have on the cost and timing of large Federal projects.

THE DEVA REPORT SIGNIFICANTLY UNDERSTATES THE COSTS OF A PTO RELOCATION.

- Using prudent assumptions and accounting for some of the risks noted above results in a \$121 million reversal in the Deva result from a \$72.4 million savings if PTO relocates to a cost increase of \$47.7 million if PTO relocates. The Arthur Andersen adjustments to the Deva analysis are as follows:

	Adjustments	NPV \$ <sup>1</sup>
Original Deva Conclusion: Government Savings of .....		(\$72.4)
Modification No. 1 (Effective Lease Commencement Date) .....	\$19.2	(\$53.2)
Modification No. 2 ("Staff Additions" Rental Rates) .....	\$4.2	(\$49.0)
Modification No. 3 (Dual Rent Calculations) .....	\$7.7	(\$41.3)
Modification No. 4 (Non-Productive Campus Travel Time) .....	\$28.3	(\$13.0)
Modification No. 5 (Program Management Fees) .....	\$7.0	(\$6.0)
Modification No. 6 (Base Year Building Rental Rate) .....	\$53.7	\$47.7
Revised Conclusion: Government Cost Increase of .....		\$47.7

<sup>1</sup> Net Present Value Impact. The parenthesis ( ) indicate cost savings; no parentheses indicates cost increases.

OVERALL, THE PROPOSED PTO RELOCATION PROJECT ENCOMPASSES SIGNIFICANT RISK AND WOULD RESULT IN HIGHER OCCUPANCY COSTS FOR THE PTO.

- The risks associated with remaining in and improving PTO's existing facilities are minimal. These facilities can be upgraded to meet the PTO's needs as disclosed to Deva, which will Accommodate future growth and provide better workplace conditions for PTO employees, all at less cost to the PTO than relocating.

#### EXECUTIVE SUMMARY

Arthur Andersen has reviewed two reports commissioned by the PTO and the Department of Commerce on the financial impacts of a potential PTO relocation from its existing facilities in Crystal City to a "hypothetical" consolidated location in Northern Virginia. These reports are:

- "Business Case Analysis of Space and Facilities Management" prepared by Deva and Associates, P.C., dated May 22, 1998 ("Deva report"); and
- "Facility Space Analysis For the Patent and Trademark Office" prepared by Jefferson Solutions, BTG, Inc., and Economics Research Associates, dated May 15, 1998 ("Jefferson Solutions report").

The purpose of this review was to assess the reasonableness and validity of the methodologies, major assumptions and key findings of these reports, focusing on the cost and financial impacts.

The Deva report compared costs for PTO to relocate to a hypothetical consolidated site versus the costs to remain in and significantly upgrade its existing facilities. The focus of the Deva report indicates that the PTO was indifferent between the two scenarios except for matters of cost. The Deva study projected a government cost savings of \$72.4 million if the PTO relocated.



OUR REVIEW OF THESE REPORTS IDENTIFIED SIGNIFICANT ISSUES REGARDING KEY ASSUMPTIONS THAT WE BELIEVE RESULT IN INACCURATE CONCLUSIONS

- Our review concludes that a relocation of the PTO from its existing facilities would result in higher PTO occupancy costs over a 20-year period.

THE COST SAVINGS PROJECTED BY DEVA AND ASSOCIATES DO NOT JUSTIFY A PTO RELOCATION

The Deva-estimated cost savings are marginal when viewed from the perspective of private sector investment criteria and the potential risks involved.

The Deva savings estimate of \$72.4 million represents only a 7.0 percent reduction in costs when compared with staying in its existing facilities and upgrading them to provide a better workplace environment and accommodate future PTO space requirements.

On a current dollar basis, the Deva-estimated savings represent an average annual 12 percent reduction in costs over the 20-year period. In contrast, private sector corporations typically target recurring cost savings twice as high, in the range of 20–25 percent, before embarking on billion dollar, multi-year relocation and/or workplace redesign projects. This is particularly true when there is no overriding strategic reason for the relocation.

A PTO RELOCATION WOULD BE ONE OF THE LARGEST, MOST COMPLEX AND MOST EXPENSIVE FEDERAL CONSTRUCTION PROJECTS EVER

- A PTO relocation would represent a significant endeavor in terms of cost and impact on PTO's business operations and employees.
- Total costs to plan, design, construct and fit-out a new consolidated facility is estimated at up to \$500 million and total costs over a 20-year period are estimated by Deva at \$1.6 billion in current dollars.

BECAUSE OF ITS SIZE AND COMPLEXITY, THERE ARE SIGNIFICANT RISKS ASSOCIATED WITH A PTO RELOCATION THAT ARE NOT ADEQUATELY ADDRESSED IN THE DEVA ANALYSIS

- *Construction Risk*—increases in construction costs above initial estimates resulting from changing space requirements, change orders, government delays, etc., would be passed through to the PTO. In addition, if space requirements are changed or not finalized in a timely manner, or other factors prolong key approval dates, etc., completion of the facility could be delayed which would further increase costs. Cost overruns and delays on Federal Government construction projects are most recently demonstrated by the Ronald Reagan building, where the ultimate cost of completion was approximately double the original estimates, and the Portals project, which was delayed by a myriad of political and economic factors.

- *Financing Risk*—possible environmental factors associated with several of the potential sites for the consolidated facility could greatly complicate and raise the cost of financing. Also, there are several factors inherent in the proposed lease structure that could complicate and/or delay financing.

- *Operating Cost Risks*—Deva estimates that a consolidated facility would incur approximately \$317 million in operating costs over a 20-year period. The PTO will face higher costs if Deva's estimate of operating expenses is less than actual costs and/or Deva's inflation projections understate actual inflation.

- *Environmental Risks*—a report prepared by an independent engineer found that "environmental concerns have been identified for several consolidated sites that could result in significant cost and schedule impacts." This would delay delivery of the consolidated facility, possibly increase PTO's overall costs and significantly complicate PTO's use and possible ownership of the property.

- *Traffic and Employee Commuting Patterns*—according to a report prepared by an independent transportation consultant, the relocation of the PTO and its 7,108 employees to several of the consolidated sites would require traffic improvements totaling tens of millions of dollars (funding sources are not in place) and negatively impact traffic flows in the vicinity of the sites. These factors will disrupt PTO employee and visitor commuting patterns, worsen air quality, and possibly increase the costs of a PTO relocation.

THE RISKS ASSOCIATED WITH REMAINING IN AND IMPROVING EXISTING FACILITIES ARE CONSIDERABLY LESS

- The existing PTO facilities require minimal new construction as shown by Deva, and have a demonstrated history of operating costs, minimal environmental issues, and well-known traffic and employee commuting patterns.

DEVA'S KEY ASSUMPTIONS AND CONCLUSION UNDERSTATE THE COSTS OF A PTO  
RELOCATION

We reviewed the 34 cost categories identified and analyzed by Deva. Most of these assumptions appeared reasonable, based on the information available.

Several key Deva assumptions, however, understate the ultimate costs of a PTO relocation. The Department of Commerce and others have characterized these assumptions as a "worst case" scenario, i.e., the projected savings estimated by Deva are conservative.

- We reviewed these key assumptions and found certain of them to be "best case" scenarios, i.e., several key assumptions are not realistic and they minimize the potential cost to the government of a PTO relocation.

In addition, we also considered the fact that the Federal Government is subject to a wide range of cost exposure (i.e., risk) with respect to several aspects of a PTO relocation, specifically the delivery date of the consolidated facility and the annual rent PTO will pay for the consolidated facility.

- For the Deva assumptions relating to these factors, we reflected a more prudent view of the Federal Government's cost exposure for the project.

REVIEW OF DEVA AND ASSOCIATES REPORT

*Summary of Deva and Associates Report*

The methodologies and key findings of the Deva and Associates report are summarized below:

- The Deva report consisted of a comparative cost analysis of two PTO location scenarios:

1. Unconsolidated Scenario—PTO stays in its existing facilities in Crystal City, which comprises 18 non-contiguous buildings.

2. Consolidated Scenario—PTO relocates to a newly built, consolidated campus facility in Northern Virginia, consisting of eight or fewer contiguous buildings. This is considered to be a hypothetical scenario because it is based on the terms of the SFO and not an actual project.

- The Deva "unconsolidated scenario" assumes that approximately \$75 million would be expended over a 20-year period to upgrade the existing facilities to meet PTO's minimum needs, as defined by PTO, and to comply with various regulatory requirements, improve the workplace environment, and accommodate projected growth in PTO personnel. Thus, the unconsolidated scenario as modeled by Deva represents upgraded facilities that PTO was willing to accept and that will be more in line with future PTO space and workplace requirements.

The focus of the Deva report indicates that the PTO was indifferent between the two scenarios except for matters of cost.

Deva identified, estimated and compared 34 cost categories for each location scenario and calculated these costs on an annual basis for a defined 20-year period, FY2002-FY2023. The start of this 20-year period was based on Deva's estimate of the effective lease commencement date for the consolidated facility. Specifically, Deva estimated that if a contract was awarded in October 1998, the effective lease commencement date would be October 1, 2001, or the start of FY2002.

Deva then calculated the net present value (NPV) of these costs as of FY2002. Deva estimated that there would be a \$72.4 million NPV cost benefit if the PTO relocated to a consolidated facility, rather than staying in upgraded existing facilities.

The Deva report focused primarily on comparing the costs for each scenario; it did not specifically address the risks associated with a PTO relocation project or whether a PTO relocation made business sense, given the estimated benefits, costs and risks inherent in such a project.

*Arthur Andersen Analysis*

Our review of the Deva report consisted of two components:

- I. An assessment of the costs and risks associated with a PTO relocation, accepting the Deva assumptions and conclusions; and

- II. An assessment of the costs and risks associated with a PTO relocation, based on revisions to certain key Deva assumptions.

I. ASSESSMENT OF THE COSTS AND RISKS ASSOCIATED WITH A PTO RELOCATION,  
ACCEPTING THE DEVA ASSUMPTIONS AND CONCLUSIONS

A. Deva Report Focused on Costs, Not Risks

To review a PTO relocation from a financial and business perspective, an assessment of the costs and risks of each of the two scenarios is required. Deva identified 34 cost categories associated with the unconsolidated and consolidated scenarios.

The Deva report did not focus specifically on risks associated with a PTO relocation project, but these risks are relevant considerations that should be weighed carefully when evaluating scenarios. The Federal Government, however, typically focuses more on a comparison of the costs associated with real estate options and this is reflected in the Deva report, which estimates and compares detailed costs for each scenario over a 20-year period.

The Deva report estimated that there would be a \$72.4 million cost savings on a net present value basis if the PTO relocated to a hypothetical consolidated facility, rather than staying in its upgraded existing facilities.

The table below summarizes the Deva estimated costs of each PTO scenario over a 20-year period, on a present value and current dollar basis:

Deva and Associates PTO Location Scenarios  
Comparison of Costs over a Midyear Period (millions of dollars)

	Unconsolidated Scenario	Consolidated Scenario	Difference (\$)	Difference (%)
Total Costs—Present Value Basis .....	\$1,031	\$959	(\$72)	(7%)
Total Costs—Current Dollar Basis .....	\$1,783	\$1,573	(\$210)	(12%)

Thus, Deva estimates that a PTO relocation to a consolidated facility would produce only a 7 percent cost savings on a net present value basis.

On a current dollar basis, the Deva-estimated savings represent an average annual 12 percent reduction in costs over the 20-year period. To generate these savings, however, would require upfront costs of up to \$500 million to plan, design, construct and fit out the consolidated facility. While the government is not funding these costs upfront—it is paying for it through rental payments over the 20-year term of the lease—it will, nonetheless, bear part of the risk associated with a development project of this size and complexity.

In contrast to Deva's estimate of an average annual 12 percent cost reduction, private sector corporations typically target recurring cost savings twice as high, in the range of 2-25 percent, before embarking on major relocation and/or workplace redesign projects.

Based on private sector criteria, therefore, it is difficult to justify that a PTO relocation is a good "investment" of government funds.

As discussed in section II below, changes to several key assumptions will have a dramatic impact on Deva's conclusions. Before we address this, however, there needs to be a discussion of the risks associated with a potential PTO relocation.

B. PTO Relocation Poses Major Government Risk

A PTO relocation would represent a significant endeavor in terms of cost and impact on PTO's business operations and employees.

- The total cost to plan, design, construct and fit-out a new consolidated facility is estimated at up to \$500 million, making it one of the largest and most expensive Federal construction projects;

- Total development and occupancy costs for the consolidated facility are estimated by Deva to be approximately \$1.6 billion over a 20-year period in current dollars; and

- The time to construct and deliver the consolidated facility is estimated by Deva to take up to 4 years, including a 1-year period to transition employees to the new facility once it is completed.

As with all projects of this magnitude, significant risk factors exist. Certain of the risks could remain with the developer of the project, but others will fall either directly or indirectly on the PTO. These risks were not considered in the Deva report. Broadly, these risks focus on:

- Construction risk
- Financing risk
- Operating Cost risk
- Environmental risk

- Traffic and Employee Commuting risk

Each of the risks described below could act alone or in combination to increase the costs of the consolidated facility above Deva's estimates. In section II, we quantify some of these risks and estimate their impact on Deva's conclusions.

#### *Construction Risk*

As cited above, total development costs of the consolidated facility have been estimated at up to \$500 million. The risks associated with construction of the consolidated facility focus on the potential for cost overruns and delayed construction/delivery of the new facility:

- *Cost Overruns.*—According to the SFO, the private sector bidders are required to reflect the cost of constructing the consolidated facility in the annual rent they propose to charge the PTO. Increases in construction costs could be passed through, in whole or in part, to the PTO in the form of higher rental payments than assumed by Deva. There are numerous factors that could increase construction costs above initial estimates. These include changing space requirements, change orders, government delays, and changing market conditions. Cost overruns on Federal Government construction projects have occurred in the past, as most recently demonstrated by the Ronald Reagan building where the ultimate cost of completion was approximately double original estimates.

- *Timing Delays.*—The timing of construction is also a risk. If space requirements are changed or not finalized in a timely manner, or other factors prolong key approval dates, etc., completion of the facility could be delayed which would, in turn, increase costs. Once again, the construction of the Ronald Reagan building is an example of a Federal building project, which was completed well behind schedule. The Portals building is another example of a project that was delayed by a myriad of political and economic factors. In addition to increased costs, delays would further disrupt PTO business operations and prolong the transition period. As we will discuss in section II, we believe that the Deva assumptions with respect to the timing of the delivery of the consolidated facility are optimistic and understate the ultimate cost to the PTO.

#### *Financing Risk*

According to the SFO, the successful bidder on the consolidated project is required to secure private sector financing to construct the facility and to cover other costs associated with delivering the space to the government. The cost of this financing is to be passed through to the PTO in the form of rental payments. There are several risks that could complicate, delay or increase the cost of financing:

- As discussed below, there could be environmental factors associated with several of the potential sites for the consolidated facility. Any environmental remediation issues would complicate, delay and raise the cost of financing;

- There are several factors inherent in the proposed lease structure that could complicate the financing. Raising \$500 million for a single project is a substantial effort, particularly with the recent turmoil in the worldwide capital markets. The proposed lease with the government is not a "date certain" lease (i.e., there is no guaranteed date on which the government will start to pay rent), resulting in increased risk to the developer and lender. There is no straight pass-through of operating expenses to PTO, increasing the risk to the developer and the lender. and The proposed lease with the government will be an operating lease, therefore, there will likely be an unamortized portion of the loan at the end of the lease term. This increases lender and developer risk, unless insurance is obtained, but this would increase the cost of financing.

#### *Operating Expense Risk*

The Deva analysis estimates that over the 20-year period, a total of \$1.6 billion will be spent on the consolidated facility, consisting of rental payments, operating expenses, capital expenditures and others costs. Of this amount, approximately \$1.0 billion would be spent on base rent and \$317 million on operating expenses. According to the SFO, the base rent is constant over the 20-year term, but the Government will pay additional rent to cover increased costs for operating expenses based on a defined CPI factor. There is the risk that Deva's estimate of operating expenses underestimates actual operating costs and that Deva's inflation projections understate actual inflation.

#### *Environmental Risk*

A May 1998 report by SCS Engineers outlined current environmental conditions and concerns with regard to several of the sites for a consolidated facility (Carlyle and Eisenhower Avenue). SCS Engineers reviewed the Draft Environmental impact Statement and concluded that it "provided a poor interpretation of the potential im-

pacts of the many environmental concerns identified for the Carlyle and Eisenhower Avenue sites.”

Further, the report states that “environmental concerns have been identified for both sites that could result in significant cost and schedule impacts” and that available information indicates that both sites have the potential for significant subsurface contamination problems.

The report further states that the presence of contaminated materials would result in significant additional expenses and delays associated with waste characterization and waste disposal. The potential cost for these activities—if the soils and fill to be excavated at the sites require management as a hazardous or toxic waste—could be up to \$194 million for the Eisenhower Avenue site and up to \$60 million for the Carlyle site.

Clearly, these potential environmental concerns can greatly complicate financing of the consolidated project. Further, the cost of environmental remediation could, in part, be passed on to the PTO in the form of higher rent payments than assumed by Deva. Finally, there is also the risk of “failure to perform” on the part of the developer. If this happened, it would significantly complicate PTO’s use and possible ownership of the property.

#### *Traffic and Employee Commuting Risk*

A May 1998 report by Callow Transportation Consulting evaluated traffic impacts for several of the possible consolidated sites. Among the report’s conclusions were:

- The relocation of the PTO and its 7,108 employees to either the Carlyle or Eisenhower Avenue sites will require traffic improvements in the immediate vicinity totaling tens of millions of dollars.
- The overall effect of a PTO relocation to either the Carlyle or Eisenhower Avenue sites will be a significant negative impact on the traffic situation in the immediate vicinity of these sites, as well as in the surrounding areas.
- The planned Woodrow Wilson Bridge project, an estimated 10-year project, will significantly disrupt traffic patterns on the I-495 Beltway and increase traffic congestion and access to these proposed consolidated sites.
- The I-395/I-495 “Mixing Bowl” project, also a planned 10-year project, will also have a major impact on the I-495 Beltway and increase congestion in the vicinity of these proposed consolidation sites.

These factors could impact the cost of a PTO relocation, disrupt PTO employee and visitor commuting patterns, and adversely impact air quality:

- A portion of the cost of the transportation improvements cited above could be borne by the developer (as well as other local and state governments) which could, in turn, pass through some of these costs to the PTO in the form of higher rental payments than assumed by Deva.
- Because of the traffic congestion described above, PTO employees who drive to work will face more difficult and lengthy commutes to new locations for the consolidated site. This will also apply to PTO’s visitors, such as customers, patent attorneys and others.
- The SCS Engineers report cited above states that relocation of the PTO to either the Carlyle or Eisenhower Avenue sites “will exacerbate an already unacceptable air quality condition.”

#### *C. Risks of Staying in Improved Existing Facilities are Much Less*

The risks associated with remaining in existing facilities are considerably less than those of a PTO relocation:

The scope of construction work needed to renovate/upgrade the existing facilities to the minimums set in the Deva study is significantly less than required to plan, design, construct and fit-out a 2 million sq ft facility; thus, construction risk for the unconsolidated scenario is far more manageable.

Financing risk is also significantly less because of the more limited scope of construction:

The existing facilities have a demonstrated operating cost history; Environmental issues associated with the existing facilities are minimal; and Traffic and PTO employee commuting patterns are well known in the existing facilities; as described previously, the traffic and employee commuting issues are far more complex for two of the potential sites for the consolidated scenario.

In summary, the financial benefits of a PTO relocation as estimated by Deva are marginal when viewed from the perspective of private sector investment criteria and the potential risks involved.

As discussed in the next section, several of the Deva assumptions, in fact, understate the ultimate cost to the PTO of a relocation from its existing facilities. If this

is considered and the risks identified above are quantified, the Deva-estimated cost savings of a PTO relocation is transformed into a cost increase.

## II. ASSESSMENT OF THE COSTS AND RISKS ASSOCIATED WITH A PTO RELOCATION, BASED ON REVISIONS TO CERTAIN DEVA KEY ASSUMPTIONS

### A. Deva Study is a "Best Case" Scenario in Key Areas

The Department of Commerce and others have characterized Deva's study as a "worst case" scenario, i.e., it incorporates assumptions which tend to maximize the potential cost to the Federal Government of a PTO relocation and result in conservative estimates of cost savings.

Our review of the key assumptions underlying Deva's conclusions found several of them to be "best case" scenarios, i.e., they minimized the potential cost to the Federal Government of a PTO relocation.

### B. Realistic Assumptions Reveal Potential \$47.7 Million Net Cost to Relocate

Based upon our review of the Deva report and other documents referenced in the bibliography, we substituted several key Deva assumptions with those that we considered to be significantly more realistic. In doing so, we also considered the fact that based on the SFO, the Federal Government is subject to a wide range of cost exposure (i.e., risk) with respect to certain critical Deva assumptions, specifically the delivery date of the consolidated facility and the annual rent PTO will pay for the consolidated facility. For these assumptions, we reflect a more prudent view of the Federal Government's cost exposure for the project, based on the terms of the SFO.

The table below summarizes the financial impacts of the Arthur Andersen modifications made to the Deva model (millions of NPV \$):

	Adjustments	NPV \$ <sup>1</sup>
Original Deva Conclusion: Government Savings of .....	(\$72.4)	(\$72.4)
Modification No. 1 ( Effective Lease Commencement Date) .....	\$19.2	(\$53.2)
Modification No. 2 ("Staff Additions" Rental Rates) .....	\$4.2	(\$49.0)
Modification No. 3 (Dual Rent Calculations) .....	\$7.7	(\$41.3)
Modification No. 4 (Non-Productive Campus Travel Time) .....	\$28.3	(\$13.0)
Modification No. 5 (Program Management Fees) .....	\$7.0	(\$6.0)
Modification No. 6 (Base Year Building Rental Rate) .....	\$53.7	\$47.7
Revised Conclusion: Government Cost Increase of .....		\$47.7

<sup>1</sup>Net Present Value impact. The parenthesis ( ) indicate cost savings; no parenthesis indicates cost increases.

Our changes to each of the Deva assumptions are described in detail below.

#### Modification No. 1—Effective Lease Commencement Date

A key assumption underlying the Deva findings is that the effective lease commencement date for the consolidated facility would be October 1, 2001, or the start of FY2002. The effective lease commencement date is defined in the SFO as the weighted average acceptance date of all of the individual phases of space delivered to the PTO. Thus, the Deva assumption implies that more than one-half of the new space would need to be constructed, fit-out, delivered and accepted by the Federal Government before October 1, 2001, or all 1.989 million osf would be delivered on October 1, 2001.

We believe that this is an aggressive assumption by Deva. The SFO states that the Federal Government is under no obligation to accept any space (other than the computer centers) prior to October 1, 2001. Further, the SFO allows the successful offeror 4 years after lease award, estimated to be October 1998, to deliver Block 1 (1.3 million osf), or until about October 1, 2002, and an additional 18 months after this date to deliver Block 2 (689,116 osf), or until about April 1, 2004.

Further, it is unclear what incentive the developer will have to deliver space as quickly as possible. The developer may, in fact, have an incentive to delay delivery of space to the government. According to the SFO, the base rental rate target of \$24 per rentable square foot in FY1996 dollars can be escalated at 2.9 percent annually until the delivery of the space. At this point, the base rental rate locks in for the entire 20-year lease term. Thus, the longer the delivery of space is delayed, the higher the base rental rate that will accrue to the developer over the 20-year lease period.

Based on these factors, our analysis assumes that the effective lease commencement date is pushed back 2 years to October 1, 2003, or the start of FY2004. The

overall financial impact of this change reduces the Deva NPV cost savings estimate from \$72.4 million to \$53.2 million.

*Modification No. 2—"Staff Additions" Rental Rates*

The Deva analysis assumes that under the unconsolidated scenario, additional space would be needed to accommodate projected PTO personnel growth to a total of 7,108 employees. Deva estimated the rent to be charged for this expansion space based on "the last five leases which contain renewal options that GSA has negotiated for PTO in Crystal City." Subsequent to the date of the Deva report, GSA signed a lease for an additional 170,924 osf for PTO and is in the process of finalizing a lease for another 36,165 osf. The rents reflected in these deals are lower than the rents assumed by Deva, which were based on the best information available at the time.

Based on this, our analysis replaces the Deva rent assumptions with the rents and step increases reflected in these recent leases. The overall financial impact of this change reduces the revised cost savings estimate from \$53.2 million to \$49.0 million.

*Modification No. 3—Dual Rent Calculations*

The Deva analysis assumed that the PTO would move its employees from existing space to the consolidated facility over a 52-week period. During this period, PTO would have to pay "dual rent," that is, rent for both the existing space and the new, consolidated space. This situation arises because of the need to transition employees over a period of time (i.e., all 7,108 PTO employees cannot be moved overnight or over a weekend) and the staggered lease expiration dates for the PTO's existing space. In other words, the leases for PTO's existing space do not terminate in sync with the timing of the PTO move to the new facility, as estimated by Deva. Thus, there will be overlap during which PTO will have to pay rent for both its existing space and its new space.

There are two key assumptions underlying Deva's dual rent analysis:

- Each week, PTO moves employees housed in blocks of space of 40,000–77,000 osf from its existing buildings to the new consolidated facility; and
- Within 3 weeks, PTO "gives back" the vacated space to GSA, at which point its obligation to pay rent on the existing space ends.

We believe that the 3-week turnaround time is optimistic; thus our analysis assumes a 4-week turnaround time. The overall financial impact of this change reduces the revised cost savings estimate from \$49.0 million to \$48.3 million.

There is another component to dual rent, which was ignored in the Deva analysis. Under its agreements with GSA, PTO essentially has the right to give space back to GSA with 120 days notice. For example, if PTO is halfway through a 2-year lease and wants to vacate the space, it gives 120 days notice to GSA of its intention to do so. After the 120-day period, PTO is no longer required to pay GSA rent for the vacated space. GSA, however, is liable for paying rent to the building landlord for the remaining term of the lease unless it has another arrangement with the landlord.

When Deva assumed that PTO would give back existing space to GSA as it moved into the consolidated facility, it did not consider any rental obligations to the building landlord that GSA would incur for vacated space which had remaining lease terms. We believe that this potential cost to GSA should be included in the calculation of dual rent because it is a cost that would be incurred by the Federal Government as part of the PTO's relocation to a consolidated facility.

To calculate this cost, we reviewed information on expiration dates and renewal terms of each lease associated with PTO's existing occupancy. Then we reviewed Deva's assumption regarding the transition of PTO from its existing space to the new consolidated facility, attempting to identify those leases that would have remaining lease terms subsequent to PTO vacating the space. Based on these factors, we estimate the potential rent liability of GSA at \$7.0 million. This cost could be significantly higher, however, if the timing of the PTO transition period is prolonged or the transition cannot be coordinated in an efficient manner.

The overall financial impact of this change reduces the revised cost savings estimate from \$48.3 million to \$41.3 million.

*Modification No. 4—Non-Productive Campus Travel Time/Consolidation Move*

The Deva report also examined the issue of employee travel time between buildings, which is considered to be "non-productive." The Deva analysis assumed that there would be a decrease in campus travel time if PTO relocated from its existing buildings to a consolidated facility.

Specifically, Deva assumed that the average PTO employee loses one-half hour per month of productive work time in its existing space because of travel time

among the 18 buildings. Deva further assumed that by moving to the consolidated facility, non-productive campus travel time would decrease to 15 minutes per month per employee.

To calculate the value of non-productive campus travel time, Deva segmented PTO employees into two groups—Patent Examiners and “PTO Staff”.

For PTO’s 3,413 Patent Examiners, Deva assumed that the value of 1 hour of non-productive campus travel time would be equal to the average hourly revenue rate of each examiner, or \$161.55 in FY2002 dollars. Thus, Deva created a schedule which calculated the total dollar value of non-productive campus travel time for all PTO Patent Examiners, assuming one-half hour of travel time per month per Examiner at a “cost” of \$161.55 per hour.

The second group of PTO employees cited by Deva was “PTO staff”, which Deva calculated at 6,597. For these employees, Deva assumed that the value of 1 hour of non-productive campus travel time would be equal to the average hourly rate of each staff, or \$36.65 in FY2002 dollars. Deva then created a schedule which calculated the total dollar value of non-productive campus travel time for all PTO Staff, assuming one-half hour of travel time per month per Staff at a “cost” of \$161.55 per hour.

We have identified two issues with the Deva analysis described above:

- We believe that the 15-minute “gap” cited by Deva between the existing complex and a new consolidated facility may be overstated. A close examination of the existing complex reveals that except for several outlying buildings at the north and south ends of the complex, which house only a small portion of PTO staff, the remaining buildings are in close proximity and their layout would resemble the layout of the consolidated facility. In addition, there is a shuttle system that runs throughout the existing complex. This shuttle minimizes non-productive travel time and the annual operating cost of the shuttle is separately considered by Deva as a cost applicable to the unconsolidated scenario. Based on these factors, our analysis applies the 15-minute “gap” only to those employees located in the outlying buildings.

- We believe that Deva has double-counted the value of non-productive travel time for the PTO’s 3,413 Patent Examiners. In our description of the Deva methodology cited above, it states that Deva calculated the cost of non-productive travel time for PTO’s 3,413 Examiners in one schedule and then calculated the cost of non-productive travel time for 6,597 “PTO Staff” in another schedule. The total PTO Staff of 6,597, however, includes Patent Examiners. Thus, the cost for the Examiners was counted twice by Deva.

Additionally, the Deva report considered the cost attributable to non-productive time associated with the consolidation move. In its analysis of moving to a consolidated facility, Deva assumed that each PTO employee would incur 6 hours of non-productive time. Deva’s calculations were based on the same hourly revenue rate and hourly staff rate described above for Patent Examiners and PTO staff.

We believe that the 6-hour assumption of non-productive time for each employee is a highly conservative estimate. While this time may accurately reflect physical move time, there are other factors which require consideration, including: 1) time associated with purging of materials prior to the move; 2) box distribution, packaging, and labeling; 3) downtime of computer and telecommunications equipment prior to and subsequent to the move; 4) limited availability of elevators and loading docks; and 5) time associated with becoming familiar with new space and support services. Upon consideration of these factors, we believe a more reasonable estimate of non-productive time associated with the consolidation move is 12 hours per employee.

The overall financial impact of these changes reduces the revised cost savings estimate from \$41.3 million to \$13.0 million.

#### *Modification No. 5—Program Management Fees*

In its analysis, Deva assumed that PTO would pay a program management fee to GSA for its work in managing the development of the new consolidated facility. The Deva analysis estimated this cost at \$7.0 million (FY2002 dollars), based on estimated levels of effort on the part of GSA employees and average labor costs per hour. We believe that Deva may have underestimated this fee.

In our review of several documents on the PTO potential relocation, it appears that the program management fee has yet to be negotiated between PTO and GSA. Further, it appears that this fee will be calculated as a percentage of the total development costs of the new consolidated facility. In several documents, GSA has stated that this percentage will be “less than 6.0 percent.” Further, in a document detailing questions posed by Congress on the PTO project, total development costs of the consolidated facility were estimated at \$500 million.

Given that GSA has stated that the fee will be less than 6.0 percent, the fee could be between \$0 (0 percent fee) and \$30 million (6.0 percent fee). For our analysis,



we assume a fee in the midpoint of the range, or 3.0 percent, resulting in a total program management fee of \$15 million.

The overall financial impact of this change reduces the revised cost savings estimate from \$13.0 million to \$6.0 million.

*Modification No. 6—Base Year Building Rental Rate*

The Committee Resolution that authorized PTO to proceed with a possible relocation to a consolidated facility outlined the cost parameters of a potential transaction with a developer. In essence, the “maximum annual cost” that could be incurred by the PTO under its lease for the new consolidated facility is \$57.3 million in FY1996 dollars. Thus, this amount is the Federal Government’s maximum cost exposure for the building rent portion of the project expressed in FY1996 dollars.

To calculate the building rent of the consolidated facility, Deva assumed a FY1996 base rent of \$24.00 per rentable square foot (excluding additional rent due to CPI increases to cover higher operating expenses). This assumption is taken from the SFO, which was based, in part, on the Committee Resolution.

Based on assumptions with respect to the space efficiency of the consolidated facility, Deva estimated the total building rent to be \$53.0 million in fiscal year 1996 dollars. This amount is \$4.3 million less than the government’s maximum cost exposure.

Of course, the consolidated facility was not in place as of FY1996, so the amounts cited above are considered to be beginning points that are allowed to be escalated annually until the consolidated facility is delivered to the PTO. Specifically, the Committee Resolution states that the \$57.3 million can increase by 2.9 percent per year until the initial delivery of the consolidated facility.

Likewise, the Deva estimate of building rent of \$53.0 million in FY1996 dollars can be escalated by the same amount. The table below compares Deva’s annual building rent with the maximum annual cost authorized by the Committee Resolution through FY2002, the year in which Deva assumes that the consolidated facility will be delivered to the PTO:

Fiscal Year	Annual Building Rent Estimated by Deva	Maximum Annual Cost Authorized by Committee Resolution
FY1996 .....	\$53.0 M	\$57.3 M
FY1997 .....	\$54.5 M	\$59.0 M
FY1998 .....	\$56.1 M	\$60.7 M
FY1999 .....	\$57.7 M	\$62.4 M
FY2000 .....	\$59.4 M	\$64.2 M
FY2001 .....	\$61.1 M	\$66.1 M
FY2002 .....	\$62.9 M	\$68.0 M

As the table demonstrates, Deva’s estimated annual building rent in FY2002 is lower than the government’s maximum cost liability. In other words, if certain Deva assumptions prove to be inaccurate, the actual rent paid for the consolidated facility could be above the Deva estimate. As a result, the Deva assumptions represent a “best case” scenario, not a “worst case” scenario.

There are numerous factors that could produce higher annual rent payments than projected by Deva:

- The efficiency of the buildings in the consolidated scenario is less than Deva’s estimate;
- There are construction cost overruns because of changing space requirements, change orders, approval delays, etc.;
- Some portion of the cost of possible environmental remediation at two of the possible consolidated sites are borne by the developer and passed through, in whole or in part, to the PTO in the form of higher rental payments;
- Some portion of the cost of traffic improvements required to accommodate two of the possible consolidated sites are borne by the developer and are passed through, in whole or in part, to the PTO in the form of higher rental payments;
- PTO’s recent request for two computer centers instead of one would increase costs; and
- The Northern Virginia real estate market has improved significantly since fiscal year 1996, increasing land values and rents for suburban office buildings. Higher land values and rental rates would be reflected in developer bids on the consolidated facility.

Because of these uncertainties, as well as the future timing of delivery of the new space, it is prudent to determine the impact on Deva's findings if the government had to pay the "maximum annual cost" for the new consolidated facility as outlined in the Committee Resolution (\$57.3 million in fiscal year 1996 dollars), rather than using the "best case" assumptions made by Deva.

The overall financial impact of this change reduces the revised cost savings estimate from \$6.0 million to a cost increase of \$47.7 million.

*C. Modifications Reveal Government will Spend More to Relocate*

The table below summarizes the financial impacts of the modifications made to the Deva model (millions of NPV \$):

	Adjustments	NPV \$ <sup>1</sup>
Original Deva Conclusion: Government Savings of .....		(\$72.4)
Modification No. 1 ( Effective Lease Commencement Date) .....	\$19.2	(\$53.2)
Modification No. 2 ("Staff Additions" Rental Rates) .....	\$4.2	(\$49.0)
Modification No. 3 (Dual Rent Calculations) .....	\$7.7	(\$41.3)
Modification No. 4 (Non-Productive Campus Travel Time) .....	\$28.3	(\$13.0)
Modification No. 5 (Program Management Fees) .....	\$7.0	(\$6.0)
Modification No. 6 (Base Year Building Rental Rate) .....	\$53.7	\$47.7
Revised Conclusion: Government Cost Increase of .....		\$47.7

<sup>1</sup> Net Present Value impact. The parenthesis ( ) indicate cost savings; no parenthesis indicates cost increases.

*D. Reliance on Deva Study To Justify Consolidation Effort is Misplaced*

The above "sensitivity analysis" clearly demonstrates that there is a significant impact on the Deva conclusion if only a handful of its 34 cost assumptions turn out to be inaccurate and the government is required to bear higher costs.

This means that the proposed PTO relocation project encompasses significant risk, while at the same time the cost savings are marginal if you accept the Deva results, and they are non-existent if you utilize more prudent assumptions.

In contrast, the costs of remaining in PTO's existing facilities—with upgrades which PTO has itself assumed would meet its needs for the next 20 years and expansion to accommodate future personnel growth—are less than the costs of relocating. Moreover, the identifiable risks of staying in existing facilities are minimal.

REVIEW OF JEFFERSON SOLUTIONS REPORT

*Summary of Jefferson Solutions Report*

On March 15, 1998, the team of Jefferson Solutions, BTG, Inc., and Economics Research Associates was contracted by the U.S. Department of Commerce to review and evaluate the PTO's consolidation and space acquisition process. The report ("Jefferson Solutions" report) examined several aspects of a PTO relocation, including the need for new space; the type and amount of new space; PTO's management of the process; and PTO's response to the Inspector General's concerns regarding space planning, build-out risk, and the GSA agreement.

With respect to the cost impact of a relocation, the analysis in the Jefferson Solutions report relied primarily on a report prepared by Deva and Associates and it focused on a comparison of the rent cost per square foot to the PTO of staying in its current location(s) versus moving to a newly developed, consolidated, campus-type facility.

The Jefferson Solutions report concluded that relocating to a consolidated facility would reduce the rent cost per square foot to the PTO. No dollar estimates of annual occupancy costs, however, were presented in the report. The report presented as evidence for its conclusion the fact that PTO is currently paying an average of \$27.89 per occupiable square foot, compared with a cost of "\$25.41 per square foot" if it relocated to a consolidated facility.

Specifically, the Jefferson Solutions report states on page A-7 that

"PTO currently has 31 leases, averaging \$27.89 per occupiable square foot ("osp") . . . The proposed lease as outlined in the Prospectus will reduce this cost to \$25.41 per square foot, expressed in 1998 dollars . . . The competitive aspect of this consolidation project has improved the efficiency factor and reduced the cost per square foot."

*Arthur Andersen Analysis*

There is an error in the Jefferson Solutions report. The report compares its estimate of the current blended lease rate of \$27.89 per occupiable square foot to the proposed lease rate of \$25.41 per square foot. The report does not specify whether the \$25.41 is on an occupiable or rentable square foot basis.

Our analysis reveals that the \$25.41 figure it is on a rentable square foot basis and was clearly calculated by taking the Prospectus rent target of \$24 per rentable square foot ("rsp") in fiscal year 1996 dollars and escalating it by 2.9 percent annually, the SFO-allowed escalation factor, for 2 years to arrive at \$25.41 in fiscal year 1998.

Thus the lease rates cited by the Jefferson Solutions report are not comparable. The report should have used an occupiable square foot basis for comparison purposes.

If the Jefferson Solutions report had used Deva and Associates core factor assumption of 11.00 percent to convert the consolidated least rate expressed in dollars per rentable square foot to dollars per occupiable square foot, the relevant lease rate would be \$28.21 per osf under the consolidated scenario. This is higher than Jefferson Solutions calculation of PTO's current blended lease rate of \$27.89 per osf. The excess cost of the consolidated rent will be even higher if the consolidated site has a core factor of greater than 11 percent.

Thus, Jefferson Solutions' conclusion that the proposed relocation would result in lower direct lease costs to PTO is incorrect.

Based on the data presented in the report, a PTO relocation from its existing space to a consolidated facility would, in fact, result in higher direct lease costs.

## BIBLIOGRAPHY

The documents reviewed by Arthur Andersen in preparation of this report include, but are not limited to, the following:

- Deva and Associates, P.C. "Business Case Analysis of Space and Facilities Management." (May 22, 1998)
- Deva and Associates, P.C. "U.S. Department of Commerce Patent and Trademark Office: Agreed Upon Procedures Report." (May 22, 1998)
- Jefferson Solutions, BTG, Inc., and Economics Research Associates. "Facility Space Analysis for the Patent and Trademark Office." (May 15, 1998)
- General Services Administration. "United States Patent and Trademark Office Space Consolidation Project, Solicitation For Offers (SFO No. 96.004)." (June 18, 1996)
- U.S. Department of Commerce Office of Inspector General. "Patent and Trademark Office: PTO Needs to Refine Its Space Consolidation Planning." (March 1998)
- General Services Administration. "Draft Environmental Impact Study for the U.S. Patent and Trademark Office Consolidation." (April 1998)
- Smale, James R., Contracting Officer Realty Services Division. "Questions Submitted For The Record By Congressman Istook."
- Callow Transportation Consulting. "Traffic Impacts from PTO at Sites in Alexandria." (July 1, 1998)
- SCS Engineers. "Environmental Review Comments, Draft EIS for the Carlyle and Eisenhower Avenue Sites." (May 20, 1998)
- Lehman, Bruce A. "Congressional Record—Senate: Patent and Trademark Office's Lease Procurement." (July 30, 1998)

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PATENT OFFICE PROFESSIONAL ASSOCIATION,  
Arlington, VA, September 21, 1998.

SEN. JOHN WARNER, *Chairman,*  
*Subcommittee on Transportation and Infrastructure,*  
*Committee on Environment and Public Works,*  
*Washington, DC 20510-4601.*

DEAR SENATOR WARNER: The Patent Office Professional Association represents over 2500 Lawyers, scientists and engineers who work at the U.S. Patent and Trademark Office. More than half of these individuals reside in the Commonwealth of Virginia.

We were impressed that you announced that the hearing scheduled for September 23, 1998 for the U. S. Patent and Trademark Office building procurement would be open to all interested parties to testify at. We are disappointed that your staff turned down our request to testify. If that decision stands, the views of our members as either employees of the USPTO or as residents of Virginia will not be heard.

We hope that you are interested in hearing why 75 percent of our members are against this building procurement.

Sincerely,

RONALD J. STERN, *President.*

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STATEMENT OF KIRK S. LIPPOLD, EISENHOWER CIVIC ASSOCIATION

Mr. Chairman, Members of the Subcommittee, and Fellow Americans: As of the Executive Committee of the Eisenhower Civic Association (ECA), it is indeed an honor and a privilege to stand before you today.

The ECA represents the citizens of Alexandria who live and operate businesses within the Eisenhower Corridor. ECA was activated by residents of the Carlyle Towers Condominium (CTC), a luxury complex of 525 homes at Carlyle, in Old Town, Alexandria. These homes will be woefully affected by the proposed relocation of the U S. Patent and Trademark Office (PTO) at Carlyle. We have serious concerns about this proposal, with respect to both the Carlyle Community and Old Town, Alexandria.

*1. The 1992 Master Plan*

The 1992 Master Plan, which culminated in an agreement between many civic associations and the City of Alexandria, envisioned for Carlyle a tastefully mixed residential, cultural, and urban development in an environment consistent with that of Old Town. Prior to 1992, Norfolk Southern Railroad owner of the 76.0-acre Carlyle property, prepared the 1990 Car/Norfolk Southern Concept Development Plan (Carlyle Plan). The ECA finds both plans to be wholly consistent. Both plans emphasized vibrant mixed use and integration of business with community life. This encompassed theaters, gardens, multiple residential developments, commercial offices and a design concept with a quality of life enticing to potential buyers.

Carlyle residents relied upon the 1992 Master Plan and the 1990 Carlyle Plan when selecting Alexandria for their home. Many of Carlyle residents are senior Citizens who chose to make the Carlyle community their retirement home because they believed that it would be a lovely mixed use development. The beautiful mixed use concept for Carlyle is now jeopardized by the proposal to replace it with the PTO.

If the PTO comes to Carlyle, the community will be transformed into another Rosslyn. The PTO, as we know it, will consist of six city blocks with five huge office buildings, two eight-story open garages, and, as its center structure, a skyscraper of 288 feet. There will be 7,000 plus PTO employees, parking spaces for 3,500 PTO cars, approximately 1,000 PTO visitors per day, a substantial number of PTO support contractor employees, and innumerable daily couriers.

The Draft Environmental Impact Statement (EIS) states that LCOR's PTO design is incompatible with the Carlyle Development Plan. The Draft states that the only possible mitigation factors are (1) change the PTO design or 2) change the Carlyle Development Plan. EAC does not want the 1990 Carlyle Development Plan changed to accommodate the PTO design.

*2. Traffic*

We do not believe the Draft EIS and LCOR's proposal adequately address the obvious problem of traffic. For example, to access the Carlyle site, many employees and those individuals doing business with the PTO would need to travel through Duke Street, a principal thoroughfare in Old Town, as well as other parts of Alexandria. Duke Street currently experiences substantial backups during rush hour. If the Carlyle site is selected, this backup will more than double, causing distraught motorists to spill over into other Old Town streets. LCOR Incorporated, the developer offering the Carlyle site in the General Services Administration (GSA) PTO competition, advises that the traffic study conducted in support of its proposal is based upon convention. Does the convention utilized by LCOR take into consideration historic narrow two-lane streets?

Our advisors indicate that, without substantial transportation improvements, the PTO at Carlyle would have a major negative impact upon 17 intersections along Duke and King Streets in Old Town, only seven of which were addressed by the Draft EIS. Of those seven, all will fail without improvement. GSA assumes that there will be funds available to improve those seven, but zero dollars are available and no planning has been done. Even if the required funds are spent, GSA recognizes that four of the seven improved intersections will fail.

The Draft does not consider the impact of the proposed decade of construction for the Woodrow Wilson Bridge which the PTO will use to provide access to an unknown but substantial number of vehicles bringing employees and visitors over the

bridge's exit ramps to the PTO. Nor does the Draft address the—I-495/95/395 Springfield interchange for which construction is also expected to take 10 years.

I am not a traffic expert. However it does not take an expert to know that more than 5 minutes is too long to cross Duke Street by foot during rush hour. What will it be with 7,000 PTO employees, 3,500 PTO cars, and 1,000 PTO visitors?

### 3. No Public Hearings

LCOR has had ample time to submit its proposed zoning changes and PTO application to the Alexandria City Planning Commission and City Council for public comment and due process. LCOR has deferred public hearings by the City since submission of its initial application in February 1998. We have heard that LCOR plans to continue deferral until after GSA makes contractor selection.

We ask the City of Alexandria to adhere to established procedures for notification and public hearings before GSA makes its decision. Bypassing these specified events would be an injustice to concerned citizens and should not be allowed.

The GSA Solicitation for Offers does not require that LCOR's PTO design have Alexandria City Planning Commission and City Council approval before contractor selection occurs. It contractor selection takes place in advance of those hearings, the Federal Government, with full knowledge of the Alexandria City Government, will have aided LCOR in obstructing the voice of the local community.

### 4. The Voices of Alexandria

I am attaching to this statement a copy of a collective letter signed by the presidents of nine civic associations and the pillars of the Alexandria community—Ellen Pickering and Lillea Finklea. These civic associations represent literally thousands of Alexandria citizens.

Mr. Chairman, Members of the Subcommittee, and Fellow Americans—ECA believes the citizens of Alexandria do not want Carlyle to be ruined.

I thank you for your time.

KIRK S. LIPPOLD, *Chairman,*  
*Executive Committee.*

### STATEMENT OF KEITH F. ADDISON, PTE., PRESIDENT EMERITUS, OKLAHOMA INVENTORS CONGRESS

Had I been allowed to testify, this is what I would have said: Good afternoon Mr. Chairman, Members of the Committee, Ladies and Gentleman:

I am to have the opportunity to appear this afternoon as the representative of the creators of America's technology, who are the principle users, and I might add, the principle financial supporters of the U.S. Patent and Trademark Office. Please understand that we are not such by choice, but at there is no Ajax Patent Company, from which we may obtain protection for our intellectual property, it's the only game in town. Unlike the users of the postal service, who have the choice of a number of alternative private suppliers for mail delivery, we have only one Patent Office but we like it as it is, and where it is. We are therefore adamantly, no vehemently, opposed to any plan to relocate the Patent Office to a "campus-like" setting in suburban or rural Virginia. The reasons are many, and include the following:

First—Location: Situated as it is in the very heart of Crystal City, the patent office is less than 5 minutes by Metro, or perhaps 10 by taxi, from Washington National Airport. Even in inclement weather, the walk from the metro station to the office is not unpleasant, as it can be made entirely through the Crystal Underground. It should be remembered that most of the patrons who come to the Patent Office are either inventors, who come from all over America, or Attorneys, agents, or researchers who are officed nearby, who come to the patent office to avail themselves of the Public Search Room facilities or to consult with members of the patent examining corps. The very idea of moving the existing and fully operational Patent Office from its current location to a nearby site in the Virginia suburbs is ludicrous, and the cost to do so is prohibitive. Not only would the cost to the inventive community be prohibitive but consideration must also be given to the appurtenant facilities, hotels, restaurants, shopping etc. that currently surround and support the patent office in which hundreds of millions of private dollars have been invested. Are these service businesses to be abandoned, because a couple of people don't like the current location? Consider also the ancillary services provided by the hundreds of law firms, which practice, adjacent thereto. These firms also have leases, which they must honor, or dishonor, at tremendous costs. All of these services will eventually come to exist around a relocated patent office, but at what cost?

We have heard of the incredibly high cost of real estate and construction in the District of Columbia and surrounding areas and feel compelled to inquire why the patent office should be situated there.

The U.S. Patent and Trademark Office has no requirement to be adjacent to the Nations Capitol. In fact, the inventive public who pays for the operation of the Patent Office would probably be better served were the office to be located elsewhere. We would respectfully suggest that real estate and construction costs, are far cheaper in other areas. We are certain that the zeal of the proponents of a new office (and of the Commissioner), would diminish considerably were plans to call for the office to be relocated to Kansas City or Tulsa. We are certain that we could provide an attractive and cost effective construction package for either of these two locations.

Second—Need. There is no compelling need to relocate the office and despite the rhetoric and posturing of the proponents of the move. While we have been told of the overwhelming requirement for additional space, some two hundred thousand square feet of currently leased space remain unoccupied. Under the proposed space allocation planned for the new facility many of the facilities and services of the of floe will no longer be available to the public or to the Examining Corps. We are speaking of the Public Search Room and of the paper files, which would be eliminated in the new facility. Examiners offices which currently comprise approximately one hundred and fifty square feet would be reduced to one hundred and 20 to accommodate the large conference areas envisioned under the new space allocation. The need for and justification of amphitheaters cannot be credibly established and would seem to represent a poor investment, as once constructed they become a long term, little used, liability as they must be paid for whether in use or not. Conversely meeting rooms and auditoriums capable of accommodating several thousand people are readily commercially available literally across the street and payment therefore is not required except when the facilities are used.

Third—Personnel: It would appear that no serious consideration and/or inquiry has been made into the needs and wants of the personnel who actually perform the work of the patent of rice. Approximately 85 percent of the employees of the office reside in the area of Northern Virginia, and of that number 75 percent are content to remain where they are and are generally satisfied with the present location of the office and have no desire to see changes made. Many of these employees have sited their homes with particular attention being given to proximity to either the patent office or to public transportation (Metro). Relocation would be extremely disruptive of their lifestyles and life plans.

In conclusion, it would appear that the motivations for relocation of the patent office are not purely altruistic and all possible alternatives have not been fully explored. While the commissioner professes to desire only a more efficient office there is the obvious question of aesthetic over-kill and wasted space. Others may profess other desires for the office but it is feared that their reasons are self-serving. The vast majority of the independent users of the services of the Patent Office are content with the location, and can find no compelling reason to expend this vast sum of money to create yet another White Elephant. If a business, or an individual, desires to lease a vehicle or a warehouse, good business practice, or just common sense suggests that following the lease, acquisition of ownership is possible for a pre-lease, agreed-upon amount. If we must lease a Patent Office, why would we not lease-to-own, so that someday, after years of paying ridiculous sums for rental, we would at least have something to show for it?

KENNEITH F. ADDISON, JR., PTE.  
*President Emeritus, Oklahoma Inventors Congress.*  
*Director, United Inventors Association of the USA,*  
*Spokesperson, Alliance for American Innovation.*

OFFICE OF HON. ERNEST J. ISTOOK, JR.,  
*U.S. House of Representatives, May 26, 1998.*

THE HONORABLE WILLIAM DALEY,  
*Secretary of Commerce,*  
*U.S. Department of Commerce,*  
*Washington, DC 20230.*

DEAR MR. SECRETARY: As you know, the recently passed supplemental appropriations bill directs you to conduct a review of the merits of the proposed procurement of new headquarters space for the Patent and Trademark Office (PTO) and to submit a report to the Appropriations Committees before any appropriated funds can be spent.

As you conduct your review, I wanted to share my thoughts on the project with you. In all candor, I must tell you I have serious reservations about this project. I have reviewed reports on PTO's planned expansion and consolidation produced by

both the National Taxpayer's Union and the Inspector General (IG) of the Commerce Department. These reports describe a procurement of tremendous magnitude and expense that threatens to have skyrocketing costs as a result of poor planning and management.

Further, the IG's report has uncovered new information that documents \$29 million in additional costs for extravagant upgrades that were hidden from Congress. PTO testified that the project included \$88 million in build-out costs, i.e. the cost of constructing and finishing the interior space with rugs, wall coverings, fixtures, etc. This build-out cost is an astonishing \$44 per square foot, more than twice as much as a typical, high quality government facility.

On top of that figure, I now learn from the IG that PTO plans to spend another \$29 million for "above standard build-out additions." So, the true cost on the build-out is not \$88 million, but rather \$117 million, a remarkable \$58 per square foot. Moreover, this additional \$29 million has not been authorized by Congress, calling into question whether PTO has the authority to legally go forward with this project at all.

In light of the information I have reviewed to date, it is my view that this project should not go forward.

Unless your report brings forth new information that I have not seen, I will attempt to use the Treasury, Postal Service and General Government Appropriations bill, which funds General Services Administration, or a similar vehicle, to put an end to this wasteful and unnecessary project. If your report reaches the same conclusion that this is a wasteful project, I encourage you to do everything in your power to terminate PTO's planned procurement.

Thank you for your attention to this matter.

Very truly yours,

ERNEST J. ISTOOK, JR.,  
*Member of Congress.*

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COMMITTEE ON GOVERNMENTAL AFFAIRS,  
U.S. SENATE,  
*Washington, DC 20510-6250, May 20, 1998.*

THE HONORABLE WILLIAM DALEY,  
*Secretary of Commerce,  
U.S. Department of Commerce,  
Washington, DC 20230.*

DEAR SECRETARY DALEY: I am pleased that you are currently reviewing the expansion and consolidation of the headquarters of the Patent and Trademark Office (PTO). Due to the alleged extravagance of the project, I believe it warrants your close attention and scrutiny.

Many issues have been raised relating to the cost-effectiveness of a possible move by PTO to a new complex. In particular I am concerned that PTO does not have a final budget for the build-out and that the Solicitation for Offers does not set a ceiling amount. The Commerce Department's own Inspector General has expressed concern that because GSA will be the manager of the the build-out, they "... will have little to no incentive to minimize PTO's costs since the higher the total build out cost, the higher GSA's fees." This alone could result in significant costs. In addition, it is also important that possible moving costs are considered and appropriately monitored.

As you proceed with the review of this project, I urge you to take every possible step to arrive at the most cost-effective option for PTO.

Sincerely,

SAM BROWNBACK, *Chairman,  
Subcommittee on Oversight of Government Management,  
Restructuring, and the District of Columbia.*

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OFFICE OF HON. EDWARD R. ROYCE,  
*U.S. House of Representatives, May 21, 1998.*

THE HONORABLE WILLIAM DALEY, *Secretary,  
Department of Commerce,  
Washington, DC 20230*

DEAR SECRETARY DALEY: I am pleased that you are reviewing the proposed new headquarters complex for the Patent and Trademark Office (PTO). I am closely monitoring the developments and costs associated with this expansion.

I have been informed that the PTO is pressing for the construction of new and expanded facilities at a cost of \$1.3 billion despite the fact that 200,000 square feet of their current 1.3 million square foot complex is unoccupied. Further, I understand that the PTO enjoys a secure lease at what appears to be favorable rates with extension options that will not expire until 2014. Serious questions have also been raised regarding what are seemingly extravagant and unnecessary aspects of the proposed facility.

I appreciate your personal attention to this project and I hope that every cost effective alternative is considered.

Sincerely,

EDWARD R. ROYCE,  
*Member of Congress.*

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OFFICE OF HON. JOHN J. DUNCAN, JR.,  
*U.S House of Representatives, June 11, 1998.*

MR. WILLIAM DALEY,  
*Secretary of Commerce,  
Department of Commerce,  
Washington, DC 20230.*

DEAR MR. DALEY: I am writing regarding the proposed Patent and Trademark Office (PTO) plan to expand its headquarters.

I have had information brought to my attention that makes the question this proposal.

I am a member of the Subcommittee on Public Buildings and Economic Development. During my service on this Subcommittee I have worked very hard to ensure that Federal construction projects are necessary and that they are completed in the most economical manner.

However, I do not believe that the proposal for a new headquarters for the PTO is necessary or that it can be carried out in an economical manner.

It is my understanding that the PTO has lease options in place that would allow it to remain at its current location until 2014. According to the National Taxpayers Union (NTU), it could cost taxpayers \$100 to \$200 million more to rent the new facility. In addition, the NTU has estimated that it could cost \$120 million just to move.

Furthermore, I believe a 20-year lease for \$1.3 billion is excessive given that this is nearly twice the cost of constructing the Ronald Reagan Building, which was the most expensive Federal building in history.

It is also not clear why the PTO would request a 2.3 million square-foot complex when it already has 200,000 square feet that is not being utilized at its current facility.

Finally, I am told that this proposal includes some excessive and lavish features such as plazas, sculptures, decorative fountains, jogging trails, amphitheaters and fitness centers.

This new project is opposed by the National Taxpayers Union, the Citizens Against Government Waste, and even more significantly, the inventors who are the clients of the PTO and the employees of the agency itself. For these reasons and others, I hope you will save the taxpayers a great amount of money by stopping this very wasteful proposal before it goes any further.

Thank you for your time and consideration. If you have any questions please feel free to give me a call.

With best wishes and personal regards, I am

Yours truly,

JOHN J. DUNCAN, JR.,  
*Member of Congress.*

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OFFICE OF HON. THOMAS M. DAVIS,  
*U.S House of Representatives, October 7, 1997.*

THE HONORABLE DAVID J. BARRAM, *Administrator,  
General Services Administration,  
Washington, DC 20405*

DEAR MR. BARRAM: I am writing in reference to the General Services Administration (GSA) Solicitation No. 96.004, the project to consolidate the offices of the Patent and Trademark Office (PTO) in northern Virginia via long-term leases. I am specifi-



cally concerned as to the amount of space to be leased and the cost of the "tenant fit-out."

As the solicitation is currently written, the PTO seeks to lease up to 2,386,940 rentable square feet of office space. The solicitation also requires each offeror to propose a building "shell" and then provide GSA with an \$88 million fit-out allowance.

I would appreciate your response to the following two concerns. First, please confirm that the 2,386,940 rentable square feet remains as the PTO's long term (20-year) requirement for space and that there are no plans or discussions underway, in GSA or PTO, or between GSA and PTO, to increase that amount. If there are any plans or discussions regarding either increasing or decreasing PTO's space requirement, I would appreciate knowing the specific nature of those plans or discussions and receiving any documents or records relating to the contemplated changes. I assume that any change in the PTO's long term space requirements will require an amended prospectus to be submitted to the Transportation and Infrastructure Committee.

Second, I understand that the Solicitation for Offers (SFO) requires offerors to provide an \$88 million Fit-Out Allowance to complete the PTO facility. This allowance, has not yet been made part of the Prospectus review process. I would therefore appreciate an explanation as to the amount of and use of the Fit-Out Allowance being required of offerors.

Given the current status of the PTO solicitation, I would appreciate your answer to these questions no later than October 24, 1997. Thank you in advance for your prompt attention to this matter.

Sincerely,

TOM DAVIS,  
*Member of Congress.*

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OFFICE OF HON. MICHAEL P. FORBES,  
*U.S. House of Representatives, May 5, 1998.*

THE HONORABLE WILLIAM M. DALEY, *Secretary,*  
*Department of Commerce,*  
*Washington, DC 20036.*

DEAR SECRETARY DALEY: I am concerned about the Patent and Trademark Office's (PTO) proposed plan to expand and consolidate its headquarters space. Information from the PTO about the intended space expansion project and the costs associated with it appears to be inaccurate and possibly misleading. PTO Commissioner Bruce Lehman's testimony last month before one of the subcommittees I serve on, the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, included apparently inaccurate statements.

Specifically, Commissioner Lehman testified that the PTO's current average rent per square foot of space is higher than the level approved in PTO's proposed expansion. The attached analysis appears to demonstrate that the Commissioner's statement is inaccurate and that the proposed PTO expansion/consolidation is far more expensive than existing options. The Commissioner also testified that the PTO is seeking new space because its current leases have expired, when the attached analysis demonstrates that the PTO has secure term leases in place and has options to remain in place until the year 2014 at what appear to be favorable rental rates. These apparent inaccuracies should be closely scrutinized and corrected. I share your interest in ensuring that the PTO's space needs are met. However, if the PTO has options on the space it needs for 16 years into the future at favorable rental rates, why is the agency proposing to spend \$1.3 billion over 20 years for a new lease?

I understand that you are currently conducting your own review of the proposed PTO consolidation and you may be evaluating concerns highlighted in the December 1997 draft report, "Insufficient Planning is Jeopardizing PTO's Space Consolidation Project," issued by the Commerce Department's Office of Inspector General. In your review of the PTO's space plans, I urge you to pay close attention to the concerns set forth and the analysis provided in the attached letter. If there is a more sensible, cost effective alternative, perhaps the current plan should be rethought. Thank you for your careful attention to these concerns.

Sincerely,

MICHAEL P. FORBES,  
*Member of Congress.*

[From the Washington Business Journal, September 18–24, 1998]

#### CRITICS OF PTO RELOCATION GET HEARING FROM SENATE

A Senate panel plans to take another look at the proposed relocation of the Patent and Trademark Office.

A subcommittee chaired by Sen. John Warner, R-VA, has scheduled a Sept. 23 hearing to discuss the controversial PTO project.

"What the Senator wants to do with a hearing is to bring everybody to the table—everybody in favor of it, everybody against it—and he wants all the arguments in front of people," said a spokesman in Warner's office.

The hearing before the Environment and Public Works Subcommittee will be held at 2:30 pm. in room 406 of the Dirksen Senate Office Building.

The move comes as the National Taxpayer Union intensifies its attacks on the project and residents living near one of the sites under consideration rally against it.

At issue is the proposed relocation of the PTO from 1.9 million square feet in 16 leased buildings in Crystal City. The General Services Administration, which oversees Federal office space, wants to sign a new 20-year lease for 2.2 million to 2.4 million square feet in eight buildings near a Metro station. The cost of the lease has been authorized at \$1.3 billion over its term.

The GSA has narrowed the search to three Northern Virginia sites and plans to request final proposals from the finalists by the end of September. GSA spokesman Jim Williams said. The agency expects to award the lease in January.

Two finalists in Alexandria are: Bethesda-based LCOR Inc., which would develop the complex at Alexandria's Carlyle development, owned by Norfolk Southern Co.; and Alexandria-based Hoffman Management Inc., which would build on a vacant site at the Eisenhower Avenue Metro station.

Arlington-based Charles E. Smith Cos., the PTO's current landlord, is the other finalist. Smith has lobbied hard to keep the PTO from moving, but it would have to do major renovations of its 1960-era Crystal City buildings if it succeeds.

The project has drawn national attention, with several of the parties involved hiring lobbying firms and the National Taxpayers Union also getting into the act.

The Alexandria-based organization wants Congress to stop the move, saying it would worsen traffic through Alexandria and Arlington. The group also called the project "extravagant" citing a plan listing the purchase of \$250 shower curtains and \$1,000 coat racks.

But the PTO said those examples and others cited by the taxpayers union came from a consultant's hypothetical study on worst-case estimates.

Furniture purchases will be based on competitive bids or the GSA schedule, and the complex's interior build-out will be capped at the Federal Government's maximum of \$36.69 a square foot. The PTO also said its leases are funded by patent fees.

This month another controversy surrounding the project erupted. A group of Alexandria residents, many of whom live in Carlyle Towers in the Carlyle development, do not like changes proposed to the Carlyle plan that would accommodate the PTO.

One of the development's streets would be cut short and another eliminated. The proposal also calls for the tallest building to increase from 220 feet to 288 feet. In addition, many of the buildings at the center of Carlyle would be changed from residential to office.

"It makes the center a dense office complex," said Carlyle Towers resident Alan Rudd. "It really changes the image of the community as it was originally proposed."

Rudd and other citizens from nine civic groups plan to lobby Alexandria officials to steer the PTO toward the other Alexandria site.

But Mayor Kerry Donley said the city is committed to getting the PTO and doesn't favor one site over the other.

He said the city, developer and residents should be able to overcome their differences should the Carlyle site be chosen.

"I'm hopeful that the city will stick to its priority—the pursuit of the Patent and Trademark Office," Donley said.

[From the Washington Times, September 8, 1998]

NEW OFFICES TERMED PATENTLY GRANDIOSE: COALITION SLAMS PLAN FOR PTO MOVE

(By Joyce Howard Price)

Anti-tax groups, some GOP senators and former Presidential candidate Ross Perot are denouncing Federal plans to spend up to \$1.3 billion to lease opulent new digs for the Patent and Trademark Office.

Critics say the offices feature lavish plazas, fountains and furnishings that include \$13,000 tables, \$240 shower curtains and \$562 stools.

The 300,000-member National Taxpayers Union and the 600,000-member Citizens Against Government Waste are pressing Congress for a "wholesale re-examination" of what they are variously describing as the "government building boondoggle" and the "PTO palace."

What's more, a new poll by the Patent Office Professional Association, a union representing patent examiners with the Patent and Trademark Office, found its members opposed the move to a new PTO complex by a margin of 3 to 1, said NTU spokesman Pete Sepp.

"We want to avoid the danger of appearing to create the next Ronald Reagan Building, with its high cost overruns and grandiose public spaces," the union, POPA, said in its newsletter, POPA News.

The Ronald Reagan International Trade Center, which began as a \$362 million project, ended up costing more than \$800 million.

Critics of the proposed PTO move portray the Reagan building as a bargain, compared with the "campus" proposed for PTO, whose 5,200 employees are currently spread out over 18 buildings and a one-mile radius in Crystal City.

Mr. Sepp points out that the Federal Government would pay twice as much as what it spent for the Reagan building to "lease, not own," the new PTO headquarters. The Reagan trade center was "built to last for 200 years, not just for a 20-year lease," he said.

Brigid Quinn, spokeswoman for PTO, said that in 1995 The General Services Administration, in concert with Congress, determined PTO needed more space and up-to-date space, and that "consolidation would make operations more efficient."

By year's end, she said, the GSA is expected to select from one of three alternatives to PTO's current location arrangements. One option, she said, would be a "reconfiguration" of the space where PTO is now. The others would be to build all-new facilities on other property in Arlington or Alexandria.

In a recent editorial, Investor's Business Daily took a swipe at PTO Commissioner Bruce Lehman's proposed "palace."

It would feature costly surfaces of granite, marble and hardwoods. There would be plazas, fountains, jogging trails, and high-tech lighting. The art crowd should be pleased with the sculptures and open-air amphitheater," the newspaper said.

In July, Sen. John McCain, Arizona Republican and chairman of the Commerce Committee, raised concerns about the "enormous cost of the project," then estimated at \$1.6 billion. That total would have included \$1.3 billion for the 20-year lease and an additional \$250 million to "improve" the new headquarters building and bring it up to PTO standards.

The Senate narrowly debated an amendment Mr. McCain made to the Commerce appropriations bill that would have shut down the proposed relocation.

But it passed an amendment sponsored by Sen. Sam Brownback, Kansas Republican, and Sen. James M. Inhofe, Oklahoma Republican, that put a \$13 billion ceiling on the lease payment and a \$135 million cap on what could be spent for moving costs, improvements and new furnishings.

NTU says it believes those costs are excessive and will continue to press Congress for more relief. "There will be hearings, hopefully, later this month," said Mr. Sepp.

[From Roll Call newspaper, July 23, 1998]

PATENTLY OVERPRICED

GOP Sen. John McCain (Ariz.) and John Warner (Va.) are battling over a proposed move by the U.S. Patent and Trademark Office that could reportedly save the taxpayer hundreds of millions of dollars in unnecessary spending.

McCain has introduced an amendment to the fiscal 1999 Commerce, Justice, State and the Judiciary appropriations bill that would allow the agency which wants to

relocate, to consider moving to DC or Maryland if it helps reduce the cost of the agency's upcoming move.

But Warner is only interested in having the PTO move anywhere inside the state of Virginia—just so that his home state keeps the agency's roughly 5,300 employees. Warner pushed through language back in 1995 preventing the PTO from fleeing the Old Dominion.

Warner has also had to deal with Sen. Sam Brownback (R-Kan.) and Rep. David McIntyre (R-Ind.), who are critical of the PTO's handling of the proposed relocation. More fireworks are possible on this controversial move soon.

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[From the Tampa (FL) Tribune, September 22, 1998]

#### HINT: THIS PALACE IS NOT IN XANADU

Now for a game of guess who.

Guess who is buying 18 shower curtains at \$250 each.

Who is buying 52 stools at \$562 each, 88 chairs at \$1,025 each, 192 chairs at \$1,200 each and 16 really nice chairs at \$1500 each.

Who is buying nine coat racks at \$1,000 each, 96 desks at \$3,000 each, seven desks at \$4,000 each and one really nice desk at \$5,000.

Who is buying three cubical curtains at \$600 each, 71 ash urns at \$309 each, 8,280 waste receptacles (trash cans) at \$133 each, 300 waste receptacles at \$100 each, and 20 really nice waste receptacles at \$870 each.

Guess who is lavishly furnishing in office building at a cost of \$9,000 per employee.

Here a a clue. The voices screaming about these prices come from the National Taxpayers Union.

The costly furniture is to go into the ornate new headquarters of the U.S. Patent and Trademark Office paid for by you-know-who—us. The structure in northern Virginia will have fancy fountains, plazas, sculptures and an open-air amphitheater. It is projected to cost the government \$1.3 billion, and that's to lease the palace, not own it.

To put that sum in local perspective consider that Hillsborough County paid \$30 million for its upscale 2-story office tower. The patent office wants to spend 43 times as much for a building with about six times as much square footage. And the patent office could cost more because there is no set cost ceiling. The taxpayers group is right to demand that Congress reconsider this extravagance.

Patent officers do vital work and they deserve a solid desk and a comfortable chair. But if Members of Congress think a clerk's coat requires a \$1,000 rack or a patent officer's trash needs a \$870 can, they're overdue for a visit home.

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[From the Indianapolis Star/News, September 10, 1998]

#### FEDS' PATENT ON WASTEFULNESS

The Federal Government's spending habits just don't seem to improve.

As part of a recent proposal to move the national Patent and Trademark Office (PTO) into a new facility, the government was prepared to pay \$250 for each shower curtain, \$1,025 (and higher) for each chair and \$1,000 for each coat rack.

The total proposed cost for furniture at the new site, under this proposal, was \$60 million. Consider: That's just one of a long list of Federal agencies.

That's not even the worst of it.

The PTO planned to spared an incredible \$1.3 billion to lease the new building for only 20 years. As a basis of comparison, the new Reagan Building cost the Federal Government about half that amount for the same amount of space—and it was purchased, not leased.

It is expected to serve the Federal Government for perhaps 200 years. not just 20.

PTO Commissioner Bruce Lehman wanted the new site to feature marble surfaces, plazas, fountains and jogging trails.

One of the first entities to raise concerns about the PTO's planned project was a watchdog group opposed to high taxes and government waste, the National Taxpayers Union. Since it publicized the matter, it has attracted allies to the cause of canceling the PTO's fancy plans.

Inspecting the building proposal, Sen. John McCain, R-Ariz., said the PTO's standards amounted to "extravagant and luxurious amenities that most of America's businesses do not provide even to their most senior executives."

We agree. For far too long, Federal officials have followed blueprints for wasting taxpayers' money. This time, Congress had better take a wrecking ball to the PTO's proposed palace before any money is spent.

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[From the Houston Chronicle, September 14, 1998]

"Remember the armed forces' \$600 hammers, coffee pots and toilet seats They're back, after a fashion. This time, it's the U.S. Patent and Trademark Office, which proposes to lease a new building and equip it with \$250 shower curtains, \$5,000 desks, \$1,000 coat racks and \$100 trash cans (some would run as high as \$870). Perhaps those prices are to be expected. According to the National Taxpayers Union, the 20-year lease of the building would cost taxpayers \$1.3 billion. The trash cans would come at additional cost."

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[From Dow Jones Investor's Business Daily, July 1, 1998]

Throughout history, kings and dictators have built plush palaces in their own honor. Have we come this far in United States history only to have a bureaucrat do the same at taxpayer expense.

One Washington group says we have. According to Citizens Against Government Waste, Patent and Trademark Office Commissioner Bruce Lehman "wants to build a billion-dollar palace for the greatest patent and trademark commissioner in history—himself."

Actually, the new headquarters proposed by Lehman would cost at least \$1.3 billion. And that's a low-ball figure. The Ronald Reagan International Trade Center, Washington's most recent example of grandiose excess, was projected to cost \$362 million.

It cost \$818 million. If Lehman's palace follows the typical government process, the new PTO headquarters would make the Reagan Center seem like a shack. Citizens Against Government Waste estimates the new PTO building would nearly double the Reagan Center's price tag—though it would be about 30 percent smaller.

What Lehman proposes is far more than a practical government structure. It would feature costly surfaces of granite, marble and hardwoods. There would be plazas, fountains, jogging trails and high-tech lighting. The art crowd should be pleased with the sculptures and open-air amphitheater.

In a city of extravagant buildings and ornate architecture, more opulence is not necessary.

Fountains, jogging trails and a museum ambience are not needed for the staff to examine patent and trademark applications. Employees would rather the money be spent on training and on search rooms, where examiners sift through the vast records of the Patent Office.

Search rooms have been cut from building plans, though, and training now is virtually nonexistent. So much for employees' noble wish, as their union says, "to do the real work of the PTO."

Understandably, inventors are also concerned. They fear they will be stuck with higher fees to pay for the huge construction costs. Their additional expenses would eventually be passed on to consumers.

The PTO has listed four reasons it needs a new building. According to the union for PTO workers, though, all but one of those needs—space for more staff—have been met.

That need can be taken care of by renting more space, the union says.

None of this is to say the PTO shouldn't build—or move into—a new office. Ownership is often preferable to long-run renting, especially when taxpayers are footing a \$57 million-a-year rent bill for the Patent Office.

Functional office space can be built—or bought—for much less than \$13 billion. Washington doesn't need another monolith.

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[Press Release from the National Taxpayers Union, August 6, 1998]

TAXPAYER GROUP'S CRUSADE AGAINST BUILDING BOONDOGGLE GAINS IMPORTANT  
NATIONAL SUPPORTER ROSS PEROT

(Washington, DC)—The 300,000-member National Taxpayers Union (NTU) hailed former Presidential Candidate Ross Perot's declaration of opposition today to a massive proposed \$1.3 billion headquarters for the Patent and Trademark Office (PTO) as "a clear sign that common sense is gaining ground on big government."

"Taxpayers welcome Ross Perot's decision to speak out against the PTO Palace," said NTU Vice President for Government Affairs Al Cors, Jr., who has organized the group's opposition to the building complex. "As one of America's best known entrepreneurs, Ross Perot lends a strong voice to those of over inventors who resent this monument to bureaucratic extravagance."

In the course of its opposition to the new PTO headquarters, to be located in Northern Virginia, NTU researchers have uncovered a member of fiscal pitfalls that could trap taxpayers:

The Federal Government would spend at least \$1.3 billion to lease, not own this facility. By contrast the Reagan Building cost about half as much to build for the same amount of space for the PTO complex—and it's built to last for 200 years, not just for a 20-year lease.

Interior build-out costs per square foot in the proposed PTO building could be more than double the standard rate for the rest of the Federal Government.

PTO's costs just for moving into the new headquarters could run more than \$130 million. One proposed moving plan would purchase \$65 million in brand new furniture, including \$250 shower curtains, \$750 cribs, \$309 ash cans, and \$1,000 coat racks.

The environmental cleanup costs of possible PTO relocation sites could be as high as \$194 million—some may contain carcinogens or even unexploded ordnance.

The Commerce Department's own Inspector General wrote that the PTO plan is "flawed because the lease development project lacks a defined cost ceiling."

Recent, the Senate narrowly voted down an amendment to the Commerce/State/Justice Appropriations Bill from Sen. John McCain (R-AZ) that would have prompted serious examination of the PTO project. However, an amendment sponsored by Sen. Sam Brownback (R-KS) and Jim Inhofe (R-OK) to establish tighter cost controls on the PTO proposal did prevail. NTU has vowed to press Congress for a wholesale reconsideration of the plan.

"By a 3 to 1 margin, PTO employees represented by the Patent Office Professional Association oppose the move to a new complex," Cors concluded. "Meanwhile, inventors like Ross Perot are calling on Congress to stop the tax on innovation that this costly building will cause. When both the workers and the customers are saying 'No to PTO,' lawmakers should listen more carefully."

#### HIGHLIGHTS OF ITEMIZED FURNITURE EXPENDITURES FROM THE DEVA REPORT PREPARED FOR THE PTO

Overall Furniture Costs—\$65 Million—Over \$9,000 per Employee

Item	Quantity	Unit Price	Total Cost
Waste Receptacle .....	300	\$100	\$30,000
Waste Receptacle .....	8,280	\$83	\$687,240
Waste Receptacle w/tray .....	20	\$870	\$17,400
Projection Screen .....	175	\$3,000	\$525,000
Ash Urn .....	71	\$309	\$21,939
Chair .....	16	\$1,500	\$24,000
Chair .....	192	\$ 1,200	\$230,000
Chair .....	88	\$1,025	\$90,200
Desk .....	1	\$5,000	\$5,000
Desk .....	7	\$4,000	\$28,000
Desk .....	96	\$3,000	\$288,000
Sofa .....	1	\$2,500	\$2,500
Stool .....	52	\$562	\$29,224
Shower Curtain .....	18	\$250	\$4,500
Bed .....	19	\$1,000	\$19,000
Bedding .....	19	\$500	\$9,500
Bedding .....	4	\$375	\$1,500
Crib .....	4	\$750	\$3,000
Cubical curtain .....	3	\$600	\$1,800
ModularTable .....	4	\$13,298	\$53,192
Table .....	1	\$2,893	\$2,893
Table .....	1	\$1,001	\$1,001
Lecturn .....	3	\$1,000	\$3,000
Mobile Cart .....	3	\$1,276	\$3,828
Coat rack .....	9	\$1,000	\$9,000
Carrel .....	300	\$1,500	\$450,000

## Overall Furniture Costs—\$65 Million—Over \$9,000 per Employee—Continued

Item	Quantity	Unit Price	Total Cost
TOTAL .....	.....	.....	\$2,541,117

CITIZENS AGAINST GOVERNMENT WASTE,  
*Washington, DC, May 18, 1998.*

Dear Members of Congress: The Commissioner of Patents and Trademarks, Bruce Lehman, is attempting to build a memorial to himself with taxpayer dollars. Under the guise of consolidating space, Commissioner Lehman is soliciting bids to construct a new PTO facility—but not just any facility. At a cost of \$1.3 billion, the PTO facility will dwarf the price tag of the \$800 million Ronald Reagan building and have 700,000 less square feet.

The PTO is asking for 2.3 million square feet although 200,000 square feet of their current 1.2 million square-foot complex is unoccupied. The Department of Commerce Inspector General has produced a report, "Insufficient Planning is Jeopardizing PTO's Space Consolidation Project," which casts some doubt on the appropriateness of this project.

In testimony before the Appropriations Committee, Commissioner Lehman stated the PTO is seeking new space because its current leases have expired. However the PTO has secure term leases in place and has options to remain in their current location until the year 2014.

It is our understanding that Commerce Secretary William Daley is currently conducting his own review of the alleged PTO consolidation. On behalf of the 600,000 members of the Council for Citizens Against Government Waste, we urge you to write Secretary Daley and impress upon him the importance of not proceeding with this project. Further, we ask that you use the appropriation and/or authorization process to terminate this attempt to loot the taxpayers.

Sincerely,

COUNCIL NEDD II,  
*Director of Government Affairs.*

## STATEMENT OF THE COUNCIL FOR CITIZENS AGAINST GOVERNMENT WASTE

THE NEW PATENT AND TRADEMARK OFFICE COMPLEX ANOTHER GOVERNMENT  
BOONDOGGLE WAITING TO HAPPEN

Whether it's the lavish Federal courthouses, the \$800 million Ronald Reagan Building boondoggle, or the \$750,000 Taj Mahal of toilets in Delaware Water Gap National Park, the Federal Government can't resist wasting money on glitzy new buildings. Next up: construction of a new complex for the Patent and Trademark Office (PTO) in Northern Virginia.

- House approval on April 23 of the 21st Century Patent System Improvement Act (H.R. 400) clears the way for a sparkling new PTO facility at an estimated cost of \$1.3 billion. If anyone in Congress thinks this estimate is accurate, they need look no further than the recently christened Ronald Reagan Building which began as a \$362 million project and wound up as an \$800 million taxpayer nightmare.

- Not only will the PTO complex wind up costing nearly double what the Reagan Building cost, it will actually be smaller. The Reagan building takes up 3 million square feet of space compared with PTO's proposed 2.3 million.

- Why will the new PTO complex cost so much? One word: Extravagance. Included in the plans are electrical, lighting, cooling, telecommunications, and elevator facilities far above top industry standards. The complex will also have plazas, sculptures, decorative fountains, walking and jogging trails, open-air amphitheaters and state-of-the-art fitness facilities—expenditures hardly necessary for the simple processing of patents and trademarks.

- PTO is asking for a 2.3 million square-foot complex even though 200,000 square feet of the current 1.2 million square-foot facility is unoccupied. In addition, PTO employees say they are happy where they are and have no desire to move to a new locale.

- Inventors and entrepreneurs will be forced to pick up the bill for the PTO palace in the form of higher surcharge fees for PTO services. Our most creative minds, whose inventions make life easier for all Americans, should not be forced to subsidize this boondoggle.

Behind this effort is Patent and Trademarks Commissioner Bruce A. Lehman. His willingness to "tax" inventors is a product of his attitude toward them. An Invention Digest story quotes him referring to these innovators as "week-end hobbyists, and that anyone who disagrees with his proposals is a Member of the lunatic fringe in the Timothy McVeigh category."

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[From POPA News, Patent Office Professional Association, January 1998]

#### IS A NEW CAMPUS JUSTIFIED WITHOUT SEARCH ROOMS?

The PTO has eliminated the search rooms in its plans for the new PTO campus, but having personnel closer to each other so that they could visit search rooms more easily was one of the main reasons the PTO cited in its request to Congress to approve the building of a new campus. The PTO called the need to have employees near to each other "collocation." In its Prospectus on the new campus, submitted to Congress it said "Collocation is vital to the PTO mission and is a continuing agency need because interaction and cross research among technology groups is an integral part of the Patent and Trademark Examining process."

The vast majority of trips made by examiners are for searching, and if there are no examiner search rooms, the need for consolidation pretty much evaporates.

#### *PTO's Reasons*

The PTO has publicly acknowledged four reasons for a new campus: to make travel easier among employees by consolidating the PTO into closer quarters; to better accommodate automation systems; to update the buildings to meet current fire, safety, and accessibility standards and to accommodate more staff.

Our increased use of automated systems requires increased electrical usage and air conditioning loads and capacity. But these are problems we've already solved. The PTO already has installed new, functioning equipment on every examiner's desktop. When management envisioned dual screen computers for every examiner, there may have been some need for more capacity than our current system can bear, but problems of capacity appear to be pretty much resolved now.

Updating the building to meet current safety and accessibility standards would cost some money, but nothing like building a new campus would cost.

That leaves the expansion of staff as a reason for a new campus. With the last expansion of our current offices to Crystal Park 2, we now occupy more than 1.7 million square feet of usable office space, which is about 400,000 square feet under the amount of usable office space called for in the specs for the new building.

However, our Crystal City location offers us one advantage that a new campus might not have: the option of renting more space in the future if we need it. The advantages of this expansion capability should not be treated lightly. If the PTO builds a campus at another location, it may not be able to get additional space when it's needed. Also, clearly it's cheaper to rent additional space where we are than to build a new campus.

In our recent employee survey, the majority of patent examiners didn't believe moving was a good idea. The current facilities are better situated for most employees. They provide good access to shops and restaurants, are accessible by public transportation, and are just off numerous main thoroughfares. That isn't true of some of the other sites considered.

Is the PTO merely interested in building a monument to patents? Many people don't realize that GSA has already negotiated long-term lease options for our current space at rates that are more reasonable than new space will be. We want to avoid the danger of appearing to create the next Ronald Reagan Building, with its high cost overruns and grandiose public spaces.

A December 17 story in The Washington Post quoted a Navy officer who had to move out of the Pentagon temporarily while it was being renovated into offices in Crystal City. He and his colleagues did not want to move back to the Pentagon because Crystal City was more convenient.

Perhaps we should reevaluate the advantages of staying where we are. Then we could use the money allocated for the new campus to do the real work of the PTO, the examination of patent and trademark applications.

#### *POPA Thrown Off Site Selection Advisory Board*

POPA has been told it may no longer attend Source Selection Advisory Board meetings, the meetings at which many of the issues regarding the selection of new space for the PTO campus are being discussed. The action is the direct result of an article in the November POPA News in which we reported on Charles E. Smith's



difficulty in getting the PTO to consider amending its specifications to make Charles E. Smith a viable bidder.

A letter from Sharon Jenkins Source Selection Authority, General Services Administration, National Capital Region, says the POPA News article calls into question POPA's ability to "fairly, objectively, and impartially evaluate Smith's and the other offerors' proposals".

*It Was Public Record*

We argued in the article that the PTO should listen to Charles E. Smith's requests to modify the specs so the company could compete fairly. But the information we had did not come from our participation upon the Source Selection Advisory Board; it was a matter of public record and available in public documents.

The purpose of the union is to be an advocate for our members' best interests. We have not abused our position on the Board by using any of the information discussed in any meetings; we have given our Board representative information about what would be best for our membership so that it can be conveyed to the Board. The flow of information has gone one way toward the Board, not out from the Board.

Our participation on the Board is understood to be a way for us to present the views of our membership to site selection decisionmakers. Our role is to represent the best interests of our bargaining unit members and it is in the interests of our membership to have Charles E. Smith be a viable competitor in this bidding because the Crystal City location offers advantages that other sites do not. Our error, apparently, was in announcing our position publicly. But we have always felt it is better to be open and above board about our position on issues that affect our membership so dramatically.

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[Press Release from the National Taxpayers Union, September 23, 1998]

NTU TO TESTIFY AT SENATE HEARING ON PATENT AND TRADEMARK OFFICE  
BOONDOGGLE

NEW STUDY SHOWS COST OF \$1.6 BILLION TO TAXPAYERS

Washington, DC—The National Taxpayers Union, along with numerous other groups, will testify before the Senate's Environment and Public Works Subcommittee today that the proposed relocation of the Patent and Trademark Office is yet one more glaring example of government waste.

The proposed relocation, which would bring all of the PTO offices together on one "campus," would cost the Federal Government \$1.6 billion dollars to lease—not own. The Ronald Reagan Building, which made headlines throughout the eighties and nineties as a "White Elephant," cost half as much as the proposed PTO plan—and it was built to last 200 years. For double the cost the PTO will have a lease on their new facility for a mere 20 years.

A September 17, 1998, study of the proposed relocation prepared by Arthur Andersen, to be released at the hearing, states:

"Overall, the proposed PTO relocation project encompasses significant risk and would result in higher occupancy costs for the PTO. The risks associated with remaining in and improving existing facilities are considerably less. Based on the data presented in the report, a PTO relocation from its existing space to a consolidated facility would, in fact, result in higher direct lease costs."

The study also shows that instead of the \$72 million dollars the PTO claims the relocation will save, there will actually be an additional cost of \$47.7 million.

Peter J. Sepp, vice president for communications for NTU, will testify that "the price of moving the PTO ought to be able to buy a whole new building."

"One proposed moving plan would purchase \$65 million in brand new furniture, with price tags often higher than those found in the poshest Beverly Hills boutiques; \$250 shower curtains, \$750 cribs, \$309 ash cans, \$562 stools and \$1,000 coat racks."

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STATEMENT OF JOHNNIE E. FRAZIER, ACTING INSPECTOR GENERAL, DEPARTMENT OF  
COMMERCE

Mr. Chairman and members of the Committee, I am pleased to appear before you today to discuss our review of the Patent and Trademark Office's plan to consolidate

its facilities and operations and accommodate its future space requirements.<sup>1</sup> PTO's space consolidation project is expected to be one of the largest real estate ventures that the Department of Commerce, or the Federal Government, will undertake in the next decade. We have had a long-standing commitment to promoting the efficient management of the Department's facilities. Hence, we share the Committee's interest in ensuring that PTO is housed in facilities that meet its needs in the most cost-effective manner. To this end, we welcome the opportunity to discuss the findings of our review.

As you are aware, planning for the PTO space consolidation effort began in 1989. In October 1995, this committee approved the prospectus for the project, which calls for the acquisition of a new or rehabilitated facility of up to 2.4 million rentable square feet<sup>2</sup> located in Northern Virginia. The approved prospectus specified that the facility should have a maximum annual rent of \$57 million for 20 years, for a total of \$1.1 billion, before allowing for inflation. In accordance with that prospectus, and in conjunction with the General Services Administration, PTO plans to award a contract to a private developer to (1) construct a new facility, or renovate an existing facility, and (2) lease it to PTO for a period of at least 20 years. PTO will also have a 10-year lease extension option at year 20 of the lease and purchase options at the 20 and 30-year marks. The solicitation for offers calls for the construction of the building shell and its "build-out" upon completion of the interior design. It is now anticipated that the lease development contract will be awarded in December 1998 or January 1999, with occupancy to begin in November 2001.

When we issued our final report in March 1998, PTO occupied all or parts of 16 buildings in the Crystal City area of Arlington, Virginia, under 32 separate leases yielding 1.7 million occupiable square feet of space, of which approximately 1.4 million is office space.<sup>3</sup>

#### *Scope of Our Review*

Given the size and importance of the proposed PTO consolidation project, our office conducted a review to determine whether (1) the project was justified, and (2) PTO was effectively managing the critical acquisition phase of the project. We examined PTO's acquisition planning and procurement strategies, as well as its current working environment, comprised of 16 current facilities. We also examined PTO's space planning methodology, including the variables used by the agency to generate its space requirements. In addition, we studied the bureau's management of risks associated with the build-out of the building shell. Finally, we examined the respective roles and relationships of the Department, PTO, and the General Services Administration. GSA has a critical role because of its position as the lease development manager of this project. In addition, the Department has an oversight role. Our analysis did not cover the acquisition of new furniture or moving costs for the consolidated facility because that cost information was not available before we issued our report. We also have not analyzed specific Environmental Impact Statements because that process is still ongoing. Our field work lasted from June to December 1997. Our final report was issued in March 1998.

#### *Our Findings*

The results of our inspection were mixed. We found a number of things that PTO was doing well, and we identified areas of concern that warranted the attention of the Department's and PTO's managers. Let me summarize for you our basic findings and recommendations, as outlined in our March 1998 report, and update you as to what actions PTO, and the Department, have taken in response to our report.

The PTO consolidation project should continue. First and foremost, we determined that PTO had justified its need for modern, contiguous office space and that the space consolidation project should continue. PTO's justifications for this project focus on future savings and efficiencies from which the government will benefit. We found that PTO has managed many aspects of the lease development procurement well. The PTO/GSA procurement strategy and the execution of that strategy have generally been successful. PTO has documented the basic requirements and benefits for the new lease development based upon its need for modern, contiguous space that

<sup>1</sup> PTO Needs to Refine Its Space Consolidation Planning, IPE-9724, March 1998, Commerce Department Inspector General reports are available on-line at <http://www.oig.doc.gov/reports/>.

<sup>2</sup> The Congress authorized 2.4 million rentable square feet, which GSA translated to 1.989 million square feet of occupiable space. Rentable space includes areas for which the government will pay rent, but are not useful as office space, such as lobbies, stairwells, rest rooms, and equipment rooms.

<sup>3</sup> PTO is in the process of expanding into a seventeenth and an eighteenth building and a 33rd lease yielding an estimated total of 1.88 million occupiable square feet. PTO has not yet accepted this additional space because it requires extensive fit-out before it can be occupied.

(1) is more efficient and less expensive than its current facilities, and (2) is compliant with the Americans with Disabilities Act and municipal health and safety codes. More specifically:

- Long-term cost savings should be realized because the current leased PTO space is more expensive than the \$24 per square foot target authorized by the approved prospectus and specified in the solicitation.<sup>4</sup>
- Significant growth in the number of patent and trademark applications has increased PTO's workload, and improved facilities should allow PTO to better meet its future staffing and space requirements.
- Current leased facilities in Crystal City, Virginia, are in need of alterations to comply with fire, safety, and handicapped accessibility laws.
- Access for PTO and its customers, both to the facility itself and to public search areas, should be improved with the new consolidated facility.

As previously noted, although PTO has generally justified its need for a new facility and has been doing a good job in managing the procurement, our report highlighted a number of concerns and problems that warranted management's attention.

PTO had not finalized its space planning. We found that as of March 1998, PTO had not completed its space planning or issued its space requirements to the offerors with only—at that time—seven months remaining before contract award. Reportedly, PTO had not finalized its space requirements because it had not reached an agreement with its bargaining unit employees over space-related working conditions. In the absence of such an agreement, PTO is not in the best position to prepare its detailed space plans and Program of Requirements for the “build-out” of the new facility. We have been very concerned that the Program of Requirements will not be defined by the scheduled lease award—now anticipated in December 1998 or January 1999. Since the Program of Requirements must be issued upon award of the lease development contract, its delay could cause a major disruption in the award schedule and would likely increase project costs. Likewise, if it is issued on time—but must be changed later—the government could potentially be exposed to change orders that could further delay the project and increase costs.

We also noted in our report that PTO had not fully considered the potential beneficial effects of its information systems reengineering in defining its space requirements. For years, PTO has invested heavily in systems reengineering and automation initiatives. Many of these initiatives were reportedly designed to achieve greater efficiencies and increase productivity by reducing PTO's staff and paper files. This should, in turn, reduce the facilities space requirements. PTO has factored only some of these initiatives, specifically the reduction in paper patent search files, into its planning for the new facility, based on its assumption that the benefits of reengineering and automation initiatives will not be realized until after occupancy of the new facility. We disagreed, suggesting that even partial success and implementation of PTO's reengineering initiatives should result in some benefit and potentially reduce its space requirements.

*PTO's build-out strategy exposes the government to cost overruns and program delays.* Another of our concerns regarding the PTO consolidation project was that PTO's build-out strategy exposes the government to cost overruns and program delays. PTO's build-out strategy calls for a pool of \$88 million to be set aside for completion or buildout of the basic building shell. The \$88 million build-out allowance will be funded through the lease with the developer. Further, PTO is planning to spend an additional \$29 million for upgraded building systems and interiors. We were critical of the above standard build-out process because it lacked a defined cost ceiling and is, in some ways, similar to a cost-type, sole-source task order construction project.<sup>5</sup> Our specific concerns included the following:

- PTO did not have a final budget for the build-out, and there was no ceiling amount specified in the Solicitation for Offers to limit the government's financial exposure.
- The absence of a defined ceiling for the build-out may, in our opinion, act as an incentive for the developers to “buy-in” with low initial offers in the hope of recouping the difference on inevitable change orders to the baseline work.
- Without build-out specifications, the offerors are subject to performance risk, which may be incorporated into their offers as cost contingencies, increasing the cost to the government.
- The lack of build-out specifications increases the likelihood of change orders to correct incomplete specifications or correct deficient ones.

<sup>4</sup> The \$24 per square foot number was expressed in 1995 dollars, the year the prospectus was approved by the Congress.

<sup>5</sup> A cost-type, sole-source task order construction contract can create a situation where the contractor has little incentive to control costs.

*The respective roles and responsibilities of PTO and GSA had not been defined in a memorandum of understanding.* A third area of concern was that PTO and GSA had not completed a memorandum of understanding outlining their respective roles. Further, the fee structure between the agencies had not been defined. At the time of our report, discussions between PTO and GSA for GSA's build-out management fee included the possibility of a cost-based fee of between three and 9 percent of incurred costs. We identified two problems with this possibility:

- The budgetary ceiling for the build-out had not been defined and GSA was expecting to receive a percentage of the costs expended. This equates to a cost-plus-percentage-of-cost fee arrangement—a practice that would be prohibited in Federal contracts. Although such an arrangement is not clearly prohibited in conjunction with interagency agreements, we are nonetheless concerned that it may act as a disincentive to use sound management practices and thus drive up costs.
- In the event GSA received any fee above 6 percent, it would be receiving a fee in excess of the statutory ceiling for a Federal cost-type construction or architect-engineering contract. While not prohibited per se in interagency agreements, a fee of such magnitude would appear to be excessive.

In addition, we found that the two agencies had not determined whether, or under what terms, PTO might subsequently turn back unneeded space to GSA. As the primary lease holder for the Federal Government, GSA has traditionally had a generous policy of accepting unneeded space from its agency customers. Hence, PTO's right to turn back unneeded office space is a critical element in PTO's facilities management strategy. Given the possibility that systems reengineering could eventually reduce PTO's space requirements, PTO wants to have the future option of relinquishing unneeded space to GSA. However, GSA's policy of accepting such office space is potentially strained by the sheer magnitude of this lease development, the expiration of the Federal Property Management Regulations, and evolving GSA policies regarding the acceptance of relinquished leased property.

Lastly, we were concerned that GSA's continuing role as construction manager had not been defined. This was important since (1) the Public Buildings Act specifies that only GSA may construct or manage the construction of buildings designated for Federal Government use, and (2) GSA is the Federal Government expert in construction and construction management. We felt that GSA should have a continuing role in the completion of the new PTO project.

*The Department of Commerce needed to improve its real estate management oversight of the PTO project.* In our March report, we also emphasized that the Department needed to improve its real estate management oversight of the PTO consolidation project. We noted that the Department's real estate staff had not adequately monitored the progress of the PTO lease development project, one of the largest Federal construction or lease projects in the Washington metropolitan area. As a result, the real estate staff did not foresee PTO's late start and slow progress in its union discussions.

#### *Our Recommendations*

In our March 1998 report and in subsequent discussions with senior PTO and Commerce managers, we made specific recommendations aimed at improving the PTO space consolidation project. Specifically, we recommended that:

- PTO and the Department continue with the lease development project.
- PTO finalize its space requirements to include—hopefully—an agreement with its employee unions, giving added consideration to the potential systems reengineering savings in its space model, and completing its Program of Requirements.
- PTO conclude a memorandum of understanding with GSA detailing the rights and responsibilities of each agency and defining GSA's fee arrangement. Further, the GSA fee should not be based on a percentage of costs expended, an arrangement that could act as a disincentive for sound management practices.
- The Department's real estate management staff should take a greater role in planning and oversight of the consolidation project.

#### *The Response to our Review and What's Happened Since*

PTO, the Department, and GSA all responded to our report and agreed to most of our recommendations. Not surprisingly, they agreed that the project should proceed. There were, however, some areas of strong disagreement. For instance, PTO did not agree that a contractual ceiling for the build-out was necessary to reduce the risk of cost growth. PTO suggested that the annual budget process would ensure that government resources were not wasted.

However, PTO did take various steps to address specific concerns. For example, as a result of our review, PTO accelerated its space planning efforts and issued draft

space planning documents.<sup>6</sup> Based upon our analysis of these draft plans, we were able to determine that PTO had justified its need for 1,989, 116 occupiable square feet for its consolidated facility. In addition, these draft plans—if necessary—can be quickly finalized for use as the Program of Requirements to guide the consolidation project buildout.

It is our understanding that PTO's space planning has not been completed because the bureau has not reached an agreement with all of its employee unions over space-related working conditions. PTO management has informed us that if they have not executed such agreements with the employee unions by the time the lease is awarded, they plan to proceed with the draft space plans and incorporate them as the final Program of Requirements. Clearly, this is not ideal and increases the risk of schedule delays and the possibility of higher costs. For example, a lengthy delay may cause one or more of the offerors to drop out of the competition due to a loss in financing or other development plans for their sites.

In to our review, PTO stated that it had accounted for the space savings associated with the "universal grid concept"<sup>7</sup> and some portions of reengineering, such as the elimination of paper search files for patent examination. Further, PTO argues that the most important reengineering initiative, electronic patent filing, will not be available until 5 years after occupancy of the new facility. PTO has stated that the ability to relinquish unneeded space back to GSA reduces the risk that PTO may lease too much space, if reengineering does, in fact, reduce the bureau's space requirements. We continue to believe that PTO can eventually reap additional space savings through the reengineering of its patent and trademark processes. PTO managers should continue to pursue such initiatives and actively work to implement them as soon as possible.

PTO and GSA have executed a memorandum of understanding, as we recommended. On September 4, 1998, PTO and GSA concluded a memorandum of understanding that reportedly addresses our concerns regarding GSA's fees, PTO's right to turn back unneeded space, and GSA's role as the construction manager. Although we have not yet had an opportunity to examine the fee structure in detail, the define the rights and responsibilities of each agency.

It should be noted that there has also been some progress in mitigating PTO's build-out risk. Our concern that PTO did not have a firm ceiling on its \$29 million build-out has been addressed by the Congress, PTO, and GSA. With legislation pending in both the Senate and the House, there seems to be growing Congressional support for a ceiling on PTO's build-out. Pending legislation would place a \$29 million ceiling on PTO's "above standard" build-out costs. In addition, PTO and GSA have agreed to manage the build-out effort to a \$29 million ceiling. As an added safeguard, we would like to see a \$29 million build-out ceiling also expressed in the contract award itself.

In response to our recommendation that the Department provide oversight, assistance, and guidance to the PTO space project, the Department has clearly established and is maintaining a higher level of involvement in the project. The Department has, for example, assigned both real property and procurement personnel to coordinate ongoing planning activities and assist in the source selection process. Moreover, the Department has contracted with procurement and commercial real estate consultants and other experts to examine other aspects of the PTO project.

In closing, we believe that PTO needs to continue to move forward with its competitive space consolidation project. We believe greater risk lies in delaying the project. PTO has made progress in its discussions with its unions, and we encourage them to press on. We believe that it is in the interest of the Department and the inventing public to proceed with this lease development while at the same time paying close attention to containing costs as the project continues.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions you or the other Members of the Committee may have.

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STATEMENT OF SAMUEL R. COLLINS, CPA, DEVA & ASSOCIATES, P.C.

Mr. Chairman, I am Samuel R. Collins, an Engagement Partner with the certified public accounting firm of Deva & Associates, P.C. I am pleased to testify today before the Subcommittee on the activities of my firm relating to the space consolida-

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<sup>6</sup> PTO prepared its draft Space Allocation Plan on October 1, 1997, and released it in response to our draft report dated December 23, 1997.

<sup>7</sup> The universal grid concept is a space planning and functional work plan that allocates the same size offices to all employees. In this case, PTO anticipates allocating 120-square-foot offices to virtually all PTO employees, including most managers.

tion effort of the U.S. Patent and Trademark Office (PTO). Under contract with the PTO, Deva & Associates, P.C. published the report entitled "U.S. Patent and Trademark Office Business Case Analysis of Space and Facilities Management." Before I discuss the activities of Deva & Associates, P.C. in support of the PTO space consolidation effort, I want to provide you with a short background on my experiences and capabilities and those of my firm. [Under ordinary circumstances, such background information would not be necessary. However, the National Taxpayer Union (NTU), in their letter of August 14, 1998, to the PTO questioned the quality of work performed by myself and my firm and our commitment to deliver within schedule and within budget.]

I am a Certified Public Accountant with over 25 years of public accounting experience, 13 of which were with a Big Five accounting firm. I have provided accounting, auditing, and consulting services to Federal and local government agencies, to real estate developers and property managers, to the banking industry, and to major public companies including Fortune 500 companies. My real estate, banking, finance, and construction experience led to my selection as project leader for the PTO task on space consolidation.

Deva & Associates, P.C., certified public accountants and management consultants, offer a wide variety of audit and financial management services including cost accounting, cost analysis, cost-benefit analysis, and renovation, relocation and construction cost analysis. Arun K. Deva, CPA, the President and founder of the firm (and former partner of a Big Five firm where he spent 15 years), and most key personnel, have Big Five or other large firm/organization backgrounds with significant and relevant experience in serving large and complex clients. In addition to the PTO, other Federal clients include the Departments of Housing and Urban Development, Treasury, and Labor, the Office of Thrift Supervision, U.S. Trade Development Agency, Small Business Administration, Government Printing Office, and the US Postal Service. The key personnel from Deva & Associates, P.C. have also provided services to such large corporations as Sears, Roebuck and Company, United Parcel Service, Coca-Cola USA, GEICO Companies, Litton Industries, and First Virginia Bank. For Federal procurement purposes, Deva & Associates, P.C., is characterized as a "small and disadvantaged business" under section 8(a) of the Small Business Act (15 USC 637(a)). Deva & Associates, P.C., is listed as a qualified vendor on the GSA Federal Supply Schedules for Audit Services, Financial Management Services and Due Diligence Services for Federal asset or loan sales.

The PTO sought an independent validation of its projected costs if it remained in its current, unconsolidated facility under existing terms and conditions, versus projected costs if it secured a consolidated site. Deva & Associates, P.C., was contracted on September 12, 1997, by the PTO to undertake a business cost analysis of space and facilities management. The resultant report was to be forwarded by the PTO to the Secretary of Commerce as part of the 1999 budget review and justification process. Specifically, the PTO directed Deva to undertake (1) a cost-benefit analysis comparing current space costs with the costs of PTO's consolidation scenario; (2) an analysis of the cost-effectiveness of the physical consolidation; and, (3) recommendations on potential cost savings from changes in existing space management practices and from changes in PTO plans for moving to a new facility or for preparing the new facility for occupancy. PTO subsequently amended the task order to add new deadlines for new requirements and new deliverables with, final amendments requiring Deva to prepare agreed-upon-procedures report in accordance with standards established by the American Institute of Certified Public Accountants. This latter amendment responded to a legislative directive to the Secretary of Commerce by the Senate Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary, and related Agencies. The total cost of the contract increased from an initial estimate of \$235,800 to \$327,800.

The business case analysis had two objectives: (1) to present a cost analysis comparing the current unconsolidated scenario and attendant operating costs with equivalent costs under the consolidated scenario; and (2) to analyze the cost effectiveness of the consolidated scenario, when all attendant costs of consolidation (e.g., physical move costs, charges for Above Federal Property Management Regulations (FPMR) standard, construction, replacement of data network, furniture purchases, etc.) were taken into account. The analysis would cover all costs that could be incurred over the 20-year lease period. In projecting costs for this business case analysis, PTO adhered to several governances, i.e.

- reliance upon documented evidence;
- conservative projections when documented evidence did not extend through fiscal year 2021;
- comparison of "apples to apples" as much as possible; and

- application of cost escalators to account for inflation, and discounting, in order to assess the costs of alternatives in “today’s dollars.”

The overall approach and methodology of the business case analysis was developed by the Government Space Acquisition Team, which was comprised of representatives from the Department of Commerce, the PTO, and the General Services Administration. Deva & Associates, P.C., performed agreed-upon-procedures to evaluate the team’s approach and methodology, and to provide support services, which included collection of data and compilation of the final analysis and report.

The business case analysis concluded that, over the 20 year term of the lease (i.e., fiscal years 2002–2021) the PTO would incur \$1,031,124,196 in costs for the unconsolidated scenario versus \$958,728,918 for the consolidated scenario. The PTO would incur \$72.4 million less in costs if it proceeded with and completed the solicitation to secure a new consolidated facility among its three existing bidders at sites in Crystal City, Eisenhower Valley, and Carlyle as opposed to remaining in its current unconsolidated site, under current terms and conditions.

Before releasing the final version of the business case analysis, the report was thoroughly reviewed and “scrubbed”, by the PTO, the Department of Commerce, and the Office of Management and Budget. In addition, the Secretary of Commerce procured the services of Jefferson Solutions, a consulting firm, and BTG, an engineering firm, to perform a final review and approval of the report. The report was formally released on May 22, 1998.

We at Deva are very pleased with the final report on the business case analysis. It was especially reassuring to learn that the report, when submitted to Senate Committee on Appropriations, Subcommittee on Commerce, Justice, State, and the Judiciary, elicited the following response (June 26, 1998, S. 2260, FY1999 Commerce, Justice, State Appropriations Bill, Senate Committee report):

The Committee has reviewed the reports submitted by the Secretary, and does not object to the Secretary’s direction that the competitive procurement process should continue. The Committee has also reviewed the business case analysis, which compares the total costs to be incurred by the PTO over the 20-year lease should the PTO stay in its current location versus a consolidated site in Virginia per the solicitation. While the Committee was impressed with the scope and thoroughness of this analysis, the Committee wants assurances that build-out and moving costs will be controlled. ,

Before concluding, however, I want to briefly rebut recent sound-bytes in the media on a very narrow portion of the business case analysis. I am referring, of course, to the “shower curtain flap.” In tab 24 of the business case analysis, the PTO calculated furniture costs for the consolidated facility. One entry, for the locker rooms of the proposed fitness center, includes six “shower curtains,” at a cost of \$250.00 each. The descriptor, unfortunately, was misleading. This is not your average chenille shower curtain that one can purchase at your local discount or department store. It is the worst-case scenario for the cost of heavy duty, gym quality shower curtain, including equipment and installation on tile. But such an analogy does make for juicy, but inaccurate, news accounts.

There are other entries in the furniture estimate section that have been taken out of context, including cribs for a child care center, beds for a sick bay in a health center and the child care center, coat racks which are really entire cloak rooms, and trash baskets which seem to be stated at high cost but are really modular components that would be incorporated into the furniture system. As such, the costs are within industry standards. But let’s keep these costs in perspective. They are estimates for a business case analysis. The business case analysis itself is a weighty and comprehensive analysis containing 85 pages of narrative, 231 pages of schedules and calculations, and more than 21,000 separate entries. Within the furniture estimate tab, there are 4,664 individual entries totaling \$59.8 million in furniture costs. For those items attracting media attention, there are just 144 entries totaling nearly \$760,000 or 1.27 percent of the total furniture estimate. While I do not want to dismiss estimates of \$760,000 as being inconsequential, I do find it vexing that \$760,000, or even more outrageous, that six shower curtains at a total cost of \$1,500, raises more eyebrows than the conclusions of an exhaustive study that predicts a \$72 million savings for a consolidated site. Any reduction in the estimated furniture costs would only increase the estimated savings.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions.

## STATEMENT OF ALLAN V. BURMAN, PRESIDENT, JEFFERSON SOLUTIONS

Mr. Chairman, and members of the Subcommittee: I appreciate the opportunity to review with you this afternoon the principal findings and recommendations from Jefferson Solutions' May 1998 Patent and Trademark Office Report prepared for the Secretary of Commerce.

I am the President of Jefferson Solutions (Solutions), a Limited Liability Company that provides management consulting and training services to the Federal Government. I am a former Administrator for Federal Procurement Policy. I served in that position in an acting capacity under President Reagan, was subsequently confirmed by the Senate under President Bush and was held on in that post under President Clinton. Solutions provides support to a number of Federal agencies on a variety of matters relating to acquisition and change management.

On March 15, 1998, the U.S. Department of Commerce contracted with the Solutions' team through the competitive Quick Reaction Task Order process to provide an independent, multi-disciplinary review and evaluation of the Patent and Trademark Office's seven-year consolidation and space acquisition process. For this review, Solutions teamed with BTG, Inc. and Economic Research Associates to offer the acquisition, real estate valuation, engineering, architectural and cost estimating skills necessary to this important task. The Secretary asked the Solutions team to validate the process in four major areas:

- The need for new space
- The type and amount of space
- PTO's management of the process

PTO's response to the Inspector General's concerns regarding space planning, build-out risk, and the GSA agreement.

As a result of our effort, Solutions concluded in a May 1998 report to the Secretary that PTO had appropriately determined its need for space, that their Solicitation for Offers (SFO) for the consolidated space to meet this need was well formulated, and that a consolidated location could produce a better more functional space than the current location at a lower cost. Therefore, we recommended that the PTO, working with the Department of Commerce, settle on requirements for the project, clarify the SFO as needed, and proceed expeditiously with the procurement.

Our recommendation to proceed was based in large part on the well established principle that competition produces the best value for the government, and in part on the need to act quickly to ensure that competition be maintained.

The final decision regarding PTO's facilities options should be based on a careful evaluation of the responses to the SFO. In our view, this competition among alternatives will produce the best value for the government, whether a move is required to produce that value or not.

The following sections provide greater detail on the team's findings, conclusions, concerns and recommendations.

#### *Findings and Conclusions*

- The Patent and Trademark Office (PTO) should continue with the consolidation effort.
- PTO currently leases space in 16 buildings under 31 leases, with a blended average annual rental rate of \$27.89 per occupiable square foot.

Under current conditions, this rental rate is well above the market price for space that can be defined as depreciated (nearing obsolescence), Class B space.

With the SFO requirements for new/improved space at a starting rental rate of \$25.41 per square foot (1998 escalated dollars), including an \$88 million (approximately \$40.00 per square foot) tenant improvement package and substantial amenities, the proposed project produces an economic benefit to PTO in excess of current market conditions.

These figures were derived in the analysis prepared by Deva and Associates; the assumptions and methodologies used in this analysis were reasonable and well formulated.

A sound process was used in determining PTO's long-term need for space in the consolidation of its offices.

The implementation of technology in support of reengineering efforts is constrained by statutory requirements and existing building limitations. Some dual system requirements (paper and electronic) may delay space/staff reduction achievement goals.

The projected 1.989 million square feet of occupiable space appears to be the appropriate amount needed by PTO for current and future needs.

The proposed PTO amenity package is not "gold plated" and is consistent with other recent Federal and private sector office projects.



Amenities included are child care facilities, fitness rooms, and a cafeteria.

The management process being employed for site selection is appropriate for the magnitude of the project.

The SFO process appears sound and structured for a fair assessment of the submitted offers.

PTO agreed with most elements of the Inspector General (IG) report dated March 1998 and is in the process of addressing those issues.

During the review and evaluation process, the Jefferson Solutions team identified a number of issues and concerns that the team felt warranted additional care and attention on the part of PTO, either at the time of the report's submission or during future acquisition steps. These issues and concerns are addressed in the following section. Subsequent to our submitting our report, the Memorandum of Understanding with GSA was completed.

#### *Issues and Concerns*

The introduction of new design requirements into the ongoing procurement process must be done as soon as possible, so as not to trigger change orders.

The General Services Administration (GSA) and the PTO had not yet as of the time of the report's submission finalized a Memorandum of Understanding (MOU). The MOU is required to:

1. Define standard and above-standard build-out cost allocations
2. Define the timing and quantity of returned space
3. Specify caps on construction costs.

Lack of clarity in fit out creates uncertainty between funding sources.

The \$29 million build-out allowance poses a risk for cost overruns.

Costly lease extensions may be needed if the procurement is delayed.

Technology, telecommunications, and security system design issues require resolution.

Parking may be inadequate for the number of employees programmed to occupy the building(s).

The Patent Officials Professional Association (POPA) and PTO have not yet resolved their dispute on office size.

The Program of Requirements (POR) remains incomplete.

#### *Recommendations*

As a result of the independent validation process under this task order, the team compiled a list of recommendations for the Department of Commerce and its Patent and Trademark Office to consider, as part of the final stages of

the Solicitation for Offers approach. The Department has taken steps to follow through on a number of them. The list is as follows:

Proceed with the current SFO on its current schedule without delays that could impact the schedule and costs.

Complete one additional amendment prior to Best and Final Offers (BAFO) to reduce risk issues.

Meet with the offerors prior to the BAFO phase and engage them in direct discussion regarding specific deficiencies in their submissions.

Ensure that the needs for the project are accurately and effectively conveyed to all stakeholders.

Continue to aggressively pursue resolution with the Patent Office Professional Association (POPA) and develop a contingency plan to avoid delay of award.

Develop a plan for accurately budgeting and monitoring the apportionment of the build-out allowances during the design development phases of each 250,000-square-foot phase of the tenant build-out.

Create a formal mechanism for ensuring design coordination among the architectural, interior design and construction members of the development team.

Utilize independent cost validation services to ensure full value for the expenditures made, the identification and allocation of costs between PTO and GSA, and the apportionment of the allowance(s) throughout the course of construction.

Check the draft and final POR documents to validate that the classification of spaces is consistent and that spaces are not duplicated.

Provide a copy of the tenant build-out POR to the shell building architects at the time of lease award to enable them to understand the impacts of design on their work.

#### *Conclusions*

In summary, in our May report, the Solutions team concluded that the Patent and Trademark Office had used a sound methodology and valid reasoning in defining its need for new space, in researching its current and future functional needs, and in

managing its consolidation and space acquisition process. Based on the strong leadership of the project team, the process was working successfully.

However, the report identified issues that still needed to be resolved to avoid severely impacting or delaying the project. Many of these, although not all, were within the control of the project team. They included the negotiation and execution of a well-defined Memorandum of Understanding, which has since been completed, the finalization of the Program of Requirements, the

resolution of the POPA dispute, and the incorporation of the technology, telecommunications, and security system design and installation into the build-out contract.

Our report's major conclusion, however, was that it would be in the Department's and the government's best interests to proceed with the competition and carefully evaluate all offers. The Department could, then, at that time, make a fully informed decision on how best to proceed. That remains our conclusion today.

Mr. Chairman, thank you very much for offering me the opportunity to report to the Subcommittee on the Solutions' study of this important project. I will be glad to answer any questions you might have.

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STATEMENT OF DAVID E. WILLIAMS, RESEARCH DIRECTOR, CITIZENS AGAINST  
GOVERNMENT WASTE

Good morning, Mr. Chairman. Thank you for the opportunity to testify today before the Subcommittee on Transportation and Infrastructure. My name is David Williams and I represent the 600,000 members of Citizens Against Government Waste (CAGW).

CAGW was created 14 years ago after the late Peter Grace presented to President Ronald Reagan the 2,478 findings and recommendations of the Grace Commission (formally known as the President's Private Sector Survey on Cost Control). These recommendations provided a blueprint for a more efficient, effective, less wasteful, and smaller government.

Since 1984, the implementation of Grace Commission and CAGW recommendations have helped save taxpayers more than \$596 billion. With a national debt of \$5.5 trillion, our work is far from done.

CAGW is very pleased that this hearing is being held. Now more than ever, taxpayers are demanding accountability from their government. Too often in the past, multi-billion dollar construction projects have been undertaken without sufficient oversight and scrutiny, leading to the waste of tens of billions of dollars.

Any time the Federal Government undertakes a major construction or renovation projects CAGW immediately becomes concerned because past projects show a pattern of excess. These include:

1. The Boston Courthouse—This \$218 million monstrosity is the quintessential symbol of excess. When complete, this courthouse will contain a six-story atrium, 63 private bathrooms, 37 libraries and 33 private kitchens. In addition, the courthouse will contain more than \$750,000 worth of art work, as well as a \$1.5 million dock. Who asked for all these amenities? The judges. Of course, they weren't the ones who had to pay for it. The Federal Government spent \$13 million for the services of world-renowned architect I.M. Pei to create this monument to government waste. Believe it or not, Pei commissioned an \$80,000 model of the courthouse made out of imported African wood.

2. The Foley Square Courthouse in New York cost taxpayers \$300 million, or more than \$400 per square foot. The General Service Administration's (GSA) Inspector General testified that Foley Square incurred more than \$120 million in change orders, including adding carpeting valued at \$114 per square yard (GSA schedule carpeting is \$20 per square yard); doors and hardware which were originally estimated at \$1,300 per set but increased to \$9,000 per door set because special woods and hardware were used, and a \$5,500 bronze fire hose cabinet.

3. The Ronald Reagan International Trade Center. This \$800 million "tribute" to Ronald Reagan is a classic example of largess and overruns, hardly the appropriate legacy for the former President. This 3-million square foot behemoth contains 42,000 slabs of limestone and enough concrete for a two-lane, 106-mile highway. The building was supposed to be completed by the end of 1993 but only officially opened in July 1998. Some of the extra costs incurred because of the delay included:

- \$8,000,000 for limestone fabrication
- \$5,000,000 for excavation
- \$4,000,000 for a retaining wall
- \$51,000 for storing the Straus Fountain

The latest example of excess, the proposed relocation of the PTO complex, has become a pitched battle on and off Capitol Hill. A report by Deva and Associates and Jefferson Solutions estimated that relocation would actually save money. A follow-up report by the accounting firm of Arthur Andersen shows just the opposite.

Deva and Associates' comparison between an unconsolidated scenario and a consolidated one shows a cost savings of \$72 million. CAGW doubts the accuracy of this figure because a number of items slated for the new location such as pantries and a child care facility, are assumed to be added to the current space, if they don't move. These little extras add up to \$ 17 million. Another reason to question Deva and Associates is because of their gross underestimation of moving costs (\$5 million), even though Congress passed a cap of \$135 million in such costs.

Deva and Associates estimates total furniture costs of \$65 million, including:

- 300 waste receptacles priced at \$100 each
- 20 waste receptacles with trays priced at \$870 each
- 71 ash urns priced at \$309 each
- 18 shower curtains priced at \$250 each.

Shower curtains this expensive are not very easy to find. ABC News had to go to New York and find one imported from Germany at this price.

A September 1998 Arthur Andersen report rebuts a Jefferson Solutions report on per square foot costs. In particular, the Arthur Andersen audit states, "There is an error in the Jefferson Solutions report. The report compares its estimate of the current blended lease rate of \$27.89 per occupiable square foot to the proposed lease rate of \$25.41 per square foot...Our analysis reveals that the \$25.41 figure is (sic.) is on a rentable square foot basis... ' Rentable square footage is always greater space than occupiable, thus bringing down the per square footage cost. According to Arthur Andersen. Thus Jefferson Solutions conclusion that the proposed relocation would result in lower direct lease costs to PTO is incorrect. Based on the data presented in the report, a PTO relocation from its existing space to a consolidated facility would, in fact, result in higher direct lease costs." This is a classic apples and oranges comparison game.

In addition, the Department of Commerce's Inspector General is concerned about the construction because of inadequate space planning and the risk of an expensive build-out.

An analysis of the costs associated with construction of the new PTO office space reveals that total construction and mortgage costs for the 20-year lease are estimated at \$1.6 billion—twice the cost of the Ronald Reagan building. After 20 years, the Federal Government won't even own the building. What will taxpayers have to show for a \$1.6 billion building? Absolutely nothing.

The new PTO complex will occupy 2.4 million square feet. In comparison, the Empire State Building occupies 2.1 million square feet and the Chicago Sears Tower occupies 3.1 million square feet.

PTO construction plans call for extras such as: lighting, cooling, telecommunications, and elevator facilities far above industry standards; lavish granite, hardwood, and marble surfacing materials; plazas, sculptures, and decorative fountains; walking and jogging trails; and an open air amphitheater.

The most popular counter argument advanced by proponents of PTO relocation is that no tax dollars will be used for this construction. Instead of requiring the American taxpayer to shell out the money, large and small inventors will be made to pay more in fees to construct the new complex. Not all inventors are rich and once a patent is approved, inventors can and do pass along the extra costs to the consumer by charging more for their products—a hidden tax. The Omnibus Reconciliation Act of 1990 called for all excess patent fees to go toward deficit reduction. This scenario to build a Taj Mahal for the PTO is typical of the irresistible impulse in Washington to spend rather than save any fiscal surplus.

This construction will also cause a domino effect where other agencies will request new buildings that are above the standard GSA per square-foot allowance.

CAGW recommends that this subcommittee take a step back and completely re-evaluate the PTO construction on two fronts:

1. Legislation to privatize PTO has passed the House and awaits action by the Senate. This could change the whole landscape of the agency. Agreeing to the construction of a new expensive building before deciding the future of the PTO puts the cart before the horse.

2. The Arthur Andersen report calls into question the entire basis and rationale for moving to a new location and deserves greater scrutiny.

CAGW recommends that the subcommittee halt plans for construction until the full committee and its House counterpart can thoroughly evaluate the Andersen report. In addition, plans for relocation should be delayed until the subcommittee and full committee determine whether the PTO will be privatized. Since GSA has exe-

cuted lease agreements that would extend the current lease until 2014. there is sufficient time to make a reasoned decision. which could save taxpayers a great deal of money.

This concludes my testimony. I'll be glad to answer any questions you may have.

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OFFICE OF THE MAYOR,  
*Alexandria, VA, September 22, 1998.*

THE HONORABLE JOHN WARNER,  
*U.S. Senate,  
Senate Office Building,  
Washington, DC 20510*

DEAR SENATOR WARNER: I am submitting my written comments regarding the September 23, 1998 Environment and Public Works Committee hearing on the proposed consolidation and relocation of the U.S. Patent and Trademark Office (PTO).

Once again, I commend you on your successful efforts in stopping the attempts to derail the PTO process. Although the attempts to delay the process have been ongoing and unsuccessful, critics of the PTO consolidation and relocation continue emphasizing several issues. These issues inaccurately portray a burden to taxpayers through excessive project spending, and transportation challenges any jurisdiction must address with such a large planned project.

As you are aware, the PTO is not funded by taxpayer dollars. The work the PTO performs is dictated by the U.S. Constitution, the laws and the treaties of the United States. The amount of work is determined by the number of applications for patents and trademarks filed worldwide. Taxpayers dollars are not in question because the PTO is supported entirely by fees paid by its customers, hence, it is self-sufficient. Additionally, the PTO will be facing lease payments at any location, and the final analysis should focus on which site can improve their operational efficiency and serve the employees of PTO. The rules and regulations the PTO is required to adhere to, along with its inability to react to an enormous increase in its workload, has caused the PTO to petition Congress to become a Federal corporation. The bill permitting this change of status is still pending and moving closer to enactment.

Access to the Alexandria sites provide the best scenario for the PTO and for overall traffic mitigation. Both Alexandria sites offer immediate access to the interstate highway system. The PTO employees and visitors can access either site directly from the Beltway and will have little use of local streets. Additionally, there is evidence to support that a large number of the PTO employees and visitors will travel to the PTO Campus via Virginia Railway Express (VRE) or Metro Rail—both of which are immediately accessible. Access to the Alexandria sites is exceptional given the immediate proximity to I-95/I-495, the regional road network, and public transit options such as VRE, Metro Rail and DASH service. We are confident that an Alexandria location can encourage more transit usage by PTO employees, above their already high levels.

The two Alexandria sites offer the best opportunity for the consolidation and relocation of the PTO and improve their overall efficiency as an organization. Alexandria's sites offer the opportunity to build a modern and high visibility PTO campus with state-of-the-art buildings and easy access for employees and customers. The Carlyle and Hoffman sites will be built to the standards of the PTO, whether it is their parking specifications or the design of the buildings, to accommodate today's high technology infrastructure. Alexandria offers the best alternative for the PTO and meets the objectives of the PTO relocation. It is the City's hope that the PTO will become Alexandria's newest and premier employer.

Again, thank you for your efforts to keep the PTO process moving.

Sincerely,

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KERRY J. DONLEY, *Mayor.*

EISENHOWER PARTNERSHIP,  
*Alexandria, VA, September 22, 1998*

THE HONORABLE JOHN WARNER,  
*U.S. Senate,  
Washington, DC 20510.*

Re: Hearing on the Proposed Consolidation and Relocation of the US Patent and Trademark Office (PTO)

DEAR SENATOR WARNER: The Eisenhower Avenue Public Private Partnership enthusiastically supports the relocation of the PTO to the Eisenhower Avenue corridor

in Alexandria. Our members studied the Hoffman and Carlyle sites and concluded that both can provide the PTO with a superior location for its offices at a cost-effective price.

Eisenhower Avenue has 4.5 miles of Beltway frontage and superior access both by mass transit and by private automobile. We have three interchanges to the Capital Beltway, including Telegraph Road adjacent to the two proposed sites and the Eisenhower Interchange, a little further but providing an uncongested and direct access to Eisenhower Avenue, a four lane divided thoroughway. To accommodate the PTO, a portion of Eisenhower Avenue east of Telegraph Road would be widened to six lanes. The Eisenhower Avenue corridor also has three Metro stations, of which two are in close proximity to the two proposed sites. Alexandria's DASH bus provides shuttle service to Eisenhower Avenue for VRE commuters. DASH and the Fairfax Connector provide additional service between Eisenhower Avenue and Old Town or the west end. The City of Alexandria's transportation studies of the Eisenhower Avenue corridor demonstrate that the corridor has sufficient transportation capacity to accommodate the 20 million square feet of additional development for which the corridor is zoned.

The Eisenhower Partnership works to facilitate development along Eisenhower Avenue. It is a membership organization with 73 members who are corporate tenants, small businesses, residents, landowners, and developers. We have been strong supporters of a PTO relocation along Eisenhower Avenue since the beginning of the procurement process. We are standing by to welcome the PTO and its employees and to assist with their relocation. Thank you for considering our comments, and for your efforts to keep the PTO procurement on track.

Sincerely yours,

AGNES PALMER ARTEMEL,  
*Executive Director.*

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ALEXANDRIA CHAMBER OF COMMERCE,  
*Alexandria, VA, September 23, 1998*

THE HONORABLE JOHN WARNER,  
*U.S. Senate,  
Washington, DC 20510.*

DEAR SENATOR WARNER: Please accept this letter as written testimony for the hearing before the Environment and Public Works Subcommittee regarding the consolidation and relocation of the Patent and Trademark Office. On behalf of the 1,100 members of the Chamber of Commerce and the Alexandria business community, I would like to express our strong interest in and commitment to bringing the U.S. Patent and Trade Office (PTO) to Alexandria, VA.

Thank you for providing a forum where the Senate subcommittee can objectively examine the facts regarding the proposed relocation of the PTO. Although there have been efforts by several parties to stop the move of the PTO, we believe that once the subcommittee reviews the facts, the committee will strongly recommend that the project continue to move forward as scheduled.

Opponents of the move have argued that it would be a huge burden on the taxpayer and worsen traffic through Alexandria and Arlington. I would like to address both of those false charges in my comments.

First, the PTO is a self-sufficient entity and is not funded by taxpayer dollars. It is totally funded by user fees and/or funds collected by the issuance of patents and trademarks. In fact, the relocation to Alexandria would actually bring an estimated \$6.2 million in new property tax revenue to the City if it relocates to either Alexandria site. In addition, the project would generate 4,200 new full-time equivalent construction jobs and increase indirect employment opportunities for area residents.

Both sites in Alexandria are easily accessible by our interstate highway system and by Metro. Alexandria remains strategically located as the best site because of the Carlyle and Hoffman sites immediate proximity to I-95/495. Because of this direct highway link, there will be little use of local streets by PTO employees and visitors. There are also convenient metro and Virginia Rail Express (VRE) connections. Many employees and visitors will take advantage of the VRE, Metro and DASH bus service options.

Bringing PTO to Alexandria has been among the top priorities of the Alexandria business community and city officials. We recognize the PTO as a high quality development project that would provide enormous benefits to the Alexandria community. Alexandria is a City that prides itself in mix-used development. Relocating the

PTO to Alexandria would provide the City the opportunity to continue to expand its commercial tax base.

Alexandria is truly the ideal location for the PTO. We look forward to continuing to be a part of the process. Thank you for your continuing interest and commitment to moving the process forward.

Sincerely,

KATHLEEN T. SNYDER,  
*President and CEO.*

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EISENHOWER CIVIC ASSOCIATION,  
2121 JAMIESON AVENUE, SUITE 1801,  
*Alexandria, Virginia 22314, September 22, 1998.*

MR. WILLIAM HURD, *Chairman,*  
*City of Alexandria Planning Commission*  
*301 King Street, Room 301*  
*Alexandria, VA 22314.*

DEAR MR. CHAIRMAN: The Eisenhower Civic Association (ECA) represents the citizens of Alexandria who live and operate businesses within the Eisenhower Corridor. We have joined with other civic associations of Alexandria to express collectively several very serious concerns which we share with respect to the community of Carlyle.

*1. U. S. Patent and Trademark Office (PTO)*

The 1992 Master Plan, which culminated in an agreement between our civic associations and the City of Alexandria, envisioned for Carlyle a tastefully mixed residential, cultural, and urban development in an environment consistent with that of Old Town. Prior to 1992, Norfolk Southern Railroad, owner of the 76.0-acre Carlyle property, prepared the 1990 Carr/Norfolk Southern Concept Development Plan. (CNS Plan). The Eisenhower Civic Association finds both plans to be wholly consistent. Both plans emphasized mixed use and integration of business with community life.

Norfolk Southern has contracted with a second developer, LCOR, to build the PTO at Carlyle. LCOR's design contains features dramatically different from the original concept which we believe are to the detriment of Old Town and Alexandria's citizens. These variances include (1) building heights substantially exceeding those set forth in the 1992 Master Plan, including a 288 foot skyscraper and (2) drastic reduction in the proportion of residential space with a concomitant increase in office space, including two huge eight-story buildings with open air garages for 3,500 cars. In order to accommodate the PTO at Carlyle, a substantial amount of space originally reserved for residential use would be moved to less desirable areas of Carlyle or eliminated altogether. The PTO complex would erase major portions of several planned streets from Carlyle's map and literally destroy the previously planned aesthetic integration of business with community life.

The Federal Courthouse was the first building to be constructed at Carlyle. Shortly thereafter came Carlyle Towers, a three-tower condominium complex. When sales of Carlyle Towers began, both the 1992 Master Plan and CNS Plan provided for a vibrant mixed use community. This encompassed theaters, gardens, multiple residential developments, and a design concept with a quality of life enticing to potential buyers. Since then, the erosion of plans for retail, cultural, and recreational facilities, combined with the proposed substantial decrease in residential space and migration of that remaining to the margins of Carlyle, leaves in substantial question any semblance of cohesive plans for development in accordance with the original concept.

The 1992 Master Plan brings to Carlyle the vitality of Old Town's tourism and night life, while preserving, for Carlyle, Old Town's history and culture. Rather than incorporate Carlyle within Old Town, LCOR proposes to incorporate Rosslyn and Crystal City within Old Town, together with its traffic jams, parking problems, and after-hours ghost town atmosphere.

*2. 1992 Master Plan No Longer Valid*

Should the Planning Commission and City Council approve the pending Norfolk Southern/ LCOR Special Use Permit (SUP) application, the City of Alexandria will have broken the promises it made to its citizens when ordaining the 1992 Master Plan for Carlyle. The residents of the City of Alexandria must be able to rely upon

accurate city plans to assist in planning their lives and personal futures. Carlyle residents relied upon the 1992 Master Plan when selecting Alexandria for their home. Many of Carlyle Towers' residents are senior citizens who chose to make the Carlyle community their retirement home because they believed that it would be a lovely mixed use development. What appears to be a drastic reversal of the initial mixed use concept for Carlyle should be redefined in terms of currently employed design guidelines. This must be done and additional public comment must be required, if the PTO Carlyle site is endorsed by City officials and selected by GSA, because the original guidelines clearly will no longer be valid due to innumerable piecemeal revisions.

### *3. Exclusion of Carlyle Citizens from the Development Process*

(a) We have learned that LCOR may submit changes to its PTO proposal (contained in the Norfolk Southern/LCOR SUP application) now on file at the Commission. To ensure that citizens residing within Carlyle and others interested throughout the city have an opportunity to review those changes as well as your staff analysis and report of the LCOR proposal, whether or not changed, we request that the Commission provide us with a copy of your analysis thereof 30 days prior to its formal consideration by the Planning Commission.

(b) Section 1 of Ordinance No. 3974, approved January 24, 1998, amends Section 12-600 of the Zoning Code to provide that an applicant for an amendment to a CO planned residential/commercial development obtain the consent of the SUP permittee if such SUP permittee is in control of the development. In the case of Carlyle, the SUP permittee is the Carlyle Development Corporation, a wholly-owned subsidiary of Norfolk Southern. The Carlyle Development Corporation shares such proposed amendments with Carlyle's commercial landowners but not with Carlyle's resident landowners. To ensure that the citizens of Carlyle are apprised of future developments, we request that the Eisenhower Civic Association be provided a copy of proposed amendments to the current Carlyle SUP or of any proposed new SUP affecting Carlyle, together with your staff analysts, at least 2 weeks before any hearing by the Commission.

(c) The analysis supporting this Ordinance provides that the Planning Staff has clear authority to approve minor amendments. We are concerned that this precept is not specifically stated in the Ordinance and note that the term "minor amendment" has not been fully defined. Therefore, we request that the Eisenhower Civic Association be provided advance notification of all changes. We further request that such notification, together with supporting analyses, be furnished so as to be received at least 2 weeks prior to action.

Please address any questions or written correspondence concerning our requests to Kirk Lippold, Chairperson of the Eisenhower Civic Association Executive Committee, or to Pat Rudd, his special assistant.

On behalf of the following civic associations, we thank you for your kind consideration.

KIRK LIPPOLD, *Chairperson,*  
*Executive Committee, Eisenhower Civic Association.*

POUL HERTEL, *President,*  
*Northeast Civic Association.*

JUDY MCVAY, *President,*  
*Old Town Civic Association.*

RON ULLRICH, *President,*  
*Inner City Civic Association.*

LILLIE FINKLEA, *Vice President,*  
*South West Quadrant Civic Association.*

MAITLAND BOTTOMS, *President,*  
*Taylor Run Civic Association.*

JUDY MILLER, *President,*

*Rosemont Civic Association.*

ASHLEY SPENCER, *President,*  
*Upper King Street Neighborhood Association.*

MCINNIS LYLES, *President,*  
*South West Quadrant Civic Association.*

JOSEPH V. FISCHER, *President,*  
*Seminary Hills Civic Association.*

ELLEN PICKERING,  
*Taylor Run Civic Association Association.*

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SEMINARY ASSOCIATION, INC.  
*Alexandria, VA, September 16, 1998.*

MR. WILLIAM B. HURD,  
*The Planning Commission,*  
*City Hall,*  
*Alexandria, VA 22313.*

SUBJECT: THE SEMINARY HILL ASSOCIATION'S POSITION ON THE EISENHOWER CIVIC ASSOCIATION'S POSITION PAPER ON THE PATENT & TRADE OFFICE IN THE CARLYLE COMMUNITY

DEAR MR. HURD: At our regular monthly meeting last week, September 10, the Seminary Hill Association (SHA), Inc. listened to an excellent presentation made by the Eisenhower Civic Association (ECA) regarding their association's position to oppose the placement of the Patent & Trade Office (PTO) in the 76 acre Carlyle Community. The arguments they made were well constructed and had significant appeal to many of the members of our association. As you know, SHA has many members that have had a long history in assisting your Office and City Council in protecting the livability index of Alexandria that we cherish as our own community.

In our discussion that evening, we heard from some of those that fought in 1992 against the development that was finally approved for the Eisenhower Valley. The question was succinctly put that the development that was finally approved that SHA was unsuccessful in defeating then was bad then and still is. But that war was lost and there was no sense now in fighting that battle again. We could understand some of the concerns that were expressed by the residences of the Carlyle Towers community and we empathized with their position that if they had known when they bought their homes what they know today, they would have possibly reconsidered selecting Carlyle as their home.

We also recognize the importance that the City Council has placed in securing an agency of the PTO stature for Alexandria. We are sensible to how this will have a positive affect on the tax base and employment situation in Alexandria and at the same time recognize the concomitant possible traffic issues, etc. that may come to the city.

After further discussion and comments, and since we could not agree on everything expressed in the ECA position paper, the Board requested that I write to you and advise that we had the unanimously agreed on the following:

1. SHA requests that the City considers the Hoffman property as the primary "home" for the PTO. We believe the access to the Metro and existing and proposed development at the Hoffman site will better serve the development of the PTO and appears to be more buildable with minimal impact on existing residences and services.
2. SHA is opposed to any structure exceeding those set forth in the 1992 Master Plan.
3. The SHA is opposed to vacation of Dulany Street and Emerson Avenue in the Carlyle Community.



Thank you for your consideration of this reader.  
Respectfully submitted,

JOSEPH V. FISCHER, *President*.

#### STATEMENT OF THE INTERNATIONAL TRADEMARK ASSOCIATION

Chairman Warner, Ranking Member Baucus, and Members of the Subcommittee on Transportation and Infrastructure: The International Trademark Association (INTA) is pleased to submit a statement in connection with this Subcommittee's investigation of the development of a campus for the United States Patent and Trademark Office (USPTO). Since we are an organization devoted to the protection of trademarks, we have chosen to focus our comments on the space facilities and maintenance of the Trademark Office, the office within the USPTO charged with the processing and examination of trademark applications and maintenance of the trademark register.

In our opinion, the time has come for the Trademark Office to receive additional, modern quarters in Northern Virginia which meet its own business needs, as well as those of its customers—the trademark owners. As we will explain in more detail later, business at the Trademark Office is growing at an incredible rate. Additional personnel are expected to come on board in the near future and need adequate space in which to work. There are plans for new electronic systems that will help increase the efficiency of examining the increased number of trademark applications. These innovative systems will require modern wiring which current space does not afford. In short, the Trademark Office must be prepared to enter the 21st Century.

#### *About INTA*

INTA is a 121-year-old not-for-profit membership organization. Since its founding in 1878, membership has grown from 12 New York-based manufacturers to more than 3,600 members that are drawn from across the United States and from 119 additional countries. Membership in INTA is open to trademark owners and those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms practicing trademark law. All of INTA's members, regardless of their size or location, share an interest in trademarks and a recognition of the importance of trademarks to their owners, to the general public, and to the economy of the United States and the global marketplace.

#### *The Trademark Office Today*

The Trademark Office, just like the patent side of the USPTO, is totally user-fee funded. Contrary to recent media reports, not one penny of taxpayer money is used to operate or manage the agency. When an applicant pays \$245 per class filing fee for each trademark application, for example, it is that money and only that money which is used to process and then examine the application. There are no funds taken from the public coffers. The funds needed to maintain the physical aspects of the Trademark Office are also taken from these and other user-fees. Everything from a new light bulb to new computers is paid for by trademark owners.

It is also significant to note that trademark owners, over a significant period of time, have turned increasingly to the Trademark Office to register their trademarks so that they can receive the maximum degree of protection permitted by law. For example, between FY 1975 and FY 1995, the number of trademark applications filed per year rose from 34,900 to 175,307. In FY 1997, the number of applications filed was 224,355.

#### *The Future and the Need for Additional Personnel*

The increase in trademark applications is a trend that shows no evidence of slowing in the future. The Administration estimates that there will be 250,000 trademark applications filed during FY 1998, and an increase to 275,000 in FY 1999. As a result of these anticipated filings, the Trademark Office is expected to have 375 examining attorneys in place by January, 1999, an increase of 75 from today. In recent months, in anticipation of these new hires, the Trademark Office has been forced to scour existing space in Crystal City, often disrupting operations in the process. It should also be noted that there is a lack of space to train the new examiners. The Office must now rent hotel conference rooms in order to conduct training classes.

Trademark Office officials report that they have actually been granted the authority to hire an additional 25 examining attorneys above the 375 number we quoted just a moment ago. However, because there is no longer any space in Crystal City for these attorneys, the Office has been forced to put an "artificial" hiring freeze in place.

*The Need for Additional and Modern Space*

How can the Trademark Office limit disruption, while at the same time ensure customer satisfaction? The answer, in our opinion, is modern facilities. INTA believes that the proposed USPTO campus will provide these benefits. The campus will contain up-to-date technology, will be contiguous (as opposed to the 17 non-contiguous buildings which the Agency now occupies), and contain sufficient room for personnel.

However, as it is our user-fees, and not taxpayer dollars as some have charged, which would go towards the leasing of this space, we strongly urge Congress to conduct effective oversight of the project. We are clearly concerned about cost, eliminating any excess or inappropriate expenses, and accurate estimates concerning the relationship between the number of applications and the rate of new personnel. The USPTO must exercise fiscal responsibility and incorporate sound business practices. We also request that Congress help to ensure that the Trademark Office is given its fair share of the facilities and that it is not preempted by the needs of the patent operations, as has so often been the case in the past.

*Conclusion*

INTA hopes that this statement will help to persuade the Subcommittee, and for that matter the Congress, that there is a need to secure additional, modern space for the Trademark Office. The USPTO, more specifically the Trademark Office, is just like a private sector business. It is funded by its customers. Its needs are driven by its customers. Simple business practice dictates that when volume is high, as it is at the Trademark Office today, you must expand and modernize to meet customer needs.

We urge the Congress to look carefully at the needs of the Trademark Office and its customers when making a decision regarding the USPTO campus.

